

**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

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F. G. NOYES, as Receiver of WASHINGTON-  
ALASKA BANK, a Corporation,  
Appellant,  
vs.

R. C. WOOD,  
Appellee.

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**Transcript of Record.**

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**Upon Appeal from the United States District Court  
for the Territory of Alaska, Fourth Division.**

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**Filed**

**JUL 1 - 1915**

**F. D. Monckton,**  
**Clerk.**



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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Answer .....	44
Assignments of Error .....	92
Attorneys of Record, Names and Addresses of..	1
Bond on Appeal .....	95
Certificate of Clerk U. S. District Court to Trans- cript of Record, etc.....	98
Citation (Copy) .....	94
Citation on Appeal (Original).....	99
Complaint .....	3
Conclusions of Law .....	84
Decree .....	85
Exception No. 1.....	87
Exception No. 2 .....	87
EXHIBITS:	
Exhibit "One" .....	20
Findings of Fact and Conclusions of Law.....	68
Names and Addresses of Attorneys of Record..	1
Order Allowing Appeal .....	91
Order Extending Return Day to May 1, 1915....	101
Order Settling and Allowing Plaintiff's Bill of Exceptions .....	88
Petition for Allowance of Appeal and Order Granting Same .....	90

Index.	Page
Plaintiff's Bill of Exceptions .....	87
Praeipie Indicating Portions of the Record to be Incorporated into the Transcript on Ap- peal .....	2
Reply .....	64
Stipulation as to Printing of the Record .....	1

*In the District Court for the Territory of Alaska,  
Fourth Division.*

1894.

F. G. NOYES, Receiver of the Washington-Alaska  
Bank, a Corporation, Organized Under the  
Laws of the State of Nevada,

Plaintiff,

vs.

R. C. WOOD,

Defendant.

**Names and Addresses of Attorneys of Record.**

O. L. RIDER, Venite, Oklahoma,

R. F. ROTH, Fairbanks, Alaska,

Attorneys for Plaintiff and Appellant.

JOHN L. MCGINN, Keystone Apartments,  
San Francisco, California,

A. R. HEILIG, Fairbanks, Alaska,

Attorneys for Defendant and Appellee.

[1\*]

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[Title of Court and Cause.]

**Stipulation as to Printing of the Record.**

It is hereby stipulated and agreed that in the printing of the record herein for the consideration of the Court on appeal, that the title of the court and cause in full on all the pages shall be omitted except on the first page, and inserted in place and stead therein "Title of Court and Cause."

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\*Page-number appearing at foot of page of original certified Record.

Dated at Fairbanks, Alaska, this 24th day of February, 1915.

R. F. ROTH,

Attorney for Plaintiff.

A. R. HEILIG,

JOHN L. MCGINN and

Attorneys for Defendant.

[Indorsed]: No. 1894. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver, &c., Plaintiff, vs. R. C. Wood, Defendant. Stipulation as to Printing Record. Filed in the District Court, Territory of Alaska, 4th Div. Feb. 24, 1915. Angus McBride, Clerk. [2]

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[Title of Court and Cause.]

**Praeipice Indicating Portions of the Record to be  
Incorporated Into the Transcript on Appeal.**

To the Clerk of said Court:

Please prepare transcript of record on the appeal of the plaintiff in the above-entitled suit, and incorporate therein the following portions of said record only, to wit:

1. Complaint of plaintiff, filed on the 5 day of April, 1914.
2. Answer of the defendant, filed on the 2 day of June, 1914.
3. Reply of the plaintiff, filed on the 4 day of June, 1914.
4. Findings of Fact and Conclusions of Law, filed on the 6 day of July, 1914.
5. Judgment and Decree, filed on the 6 day of July, 1914.



6. Plaintiff's bill of exceptions, filed on the 6 day of July, 1914.
7. Order settling plaintiff's bill of exceptions, filed on the 6 day of July, 1914.
8. Petition for appeal, filed on the 28 day of Jan., 1915.
9. Order allowing appeal, filed on the 28 day of Jan., 1915.
10. Assignment of errors, filed on the 28 day of Jan., 1915.
11. Bond on appeal and order approving same, filed on the 20 day of February, 1915.
12. Citation and service thereon, filed on the 28 day of Jan., 1915. [3]
13. Order extending return day and time for docketing said cause on appeal, filed on the 20 day of Feb., 1915.
14. Stipulation for printing transcript, filed on the 24 day of Feb., 1915.
15. Praecipe for transcript, filed on the 28 day of Jan., 1915.

Signed this 9th day of September, 1914.

O. L. RIDER,

Attorney for Plaintiff.

[Indorsed]: F. G. Noyes, Receiver, etc., Plaintiff, vs. R. C. Wood, Defendant. Praecipe for Transcript. Filed in the District Court, Territory of Alaska, 4th Div. Jan. 28, 1915. Angus McBride, Clerk. [4]

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[Title of Court and Cause.]

**Complaint.**

The plaintiff, for a cause of action against the de-

fendant, alleges and states:

(I)

The Washington-Alaska Bank, is, and ever since the 21st day of January, 1908, has been a corporation duly organized and existing under and by virtue of the laws of the State of Nevada. Said Washington-Alaska Bank was originally incorporated under the corporate name of "Fairbanks Banking Company," but afterward, on or about, or shortly prior to the 14th day of September, 1910, its name was, by amendments to its Articles of Incorporation, duly changed to Washington-Alaska Bank. The authorized capital stock of said corporation is and was at all times since its incorporation, \$300,000.00, divided into 3000 shares of the par value of \$100.00 each.

(II)

That for a long time prior to the 16th day of March, 1908, this defendant, together with E. T. Barnette and James W. Hill, were engaged in business at Fairbanks, Alaska, as copartners under the firm name and style of Fairbanks Banking Company, with an agreement and understanding between said copartners that the profits of said business should be divided as follows: one-half thereof to the said E. T. Barnette, and one-fourth thereof each to the said James W. Hill and this defendant. That on said 16th day of March, [5] 1908, it was claimed by said copartners that the assets of said business exceeded all liabilities of said partnership in the sum of \$252,000.00; and that, of said sum the said E. T. Barnette was entitled to \$200,000.00 as capital invested, and that the remaining \$52,000.00 as profits

belonged to said partners in the proportion above stated; that is to say, to E. T. Barnette, \$26,000.00; to James W. Hill \$13,000; and to this defendant, \$13,000.00

(III)

That prior thereto, to wit, in January, 1908, for the purpose of organizing the said Fairbanks Banking Company, a corporation, which should have as its object and be for the purpose of, among other things, the taking over and acquiring the business of said copartnership, the said copartners circulated and caused to be circulated, stock subscription lists subscribing to the capital stock of said corporation, which said stock subscription lists, omitting the signatures thereto, is hereto attached and marked "Exhibit One," and the same is made a part hereof by reference the same as if fully incorporated herein.

(IV)

That, as shown by said stock subscription lists, said copartners subscribed for shares of the capital stock of said corporation, as follows: E. T. Barnette, 440 shares; James W. Hill, 220 shares; and this defendant, R. C. Wood, 220 shares.

(V)

That after the organization of said Fairbanks Banking Company, a corporation, to wit, on March 12th, 1908, at a meeting of the Board of Directors of said corporation, this defendant was duly elected cashier thereof, and at the same meeting of said directors, a resolution of said directors was adopted as follows:

"That should James W. Hill and R. C. Wood not

take the full \$44,000.00 in stock in the new corporation the balance of the amount not so taken to be paid to them not later than July 1, 1908.”

[6] which said resolution had been previously adopted at a meeting of the stockholders of said corporation held January 5th, 1908.

(VI)

It was further resolved at said meeting of said Board of Directors that the president and secretary of said corporation be instructed to issue 220 shares of the capital stock of said corporation to the said R. C. Wood, this defendant, in exchange for the property received by said corporation from said partnership, which said stock should be deemed fully paid; a copy of which resolution is as follows, to wit:

“It was moved by Mr. Robinson, seconded by Mr. Yarnell that the president and secretary be instructed to issue stock to E. T. Barnette, James W. Hill and R. C. Wood in exchange for the property received by the Fairbanks Banking Company, a corporation, as follows:

440 shares to E. T. Barnette.

220 shares to James W. Hill.

220 shares to R. C. Wood.

and that said stock be deemed fully paid in exchange for property received from said persons. Said stock being issued for the assets of the corporation upon which a valuation has been placed at \$288,000.00 in excess of its total liabilities, less \$200,000.00 the capital stock of the old bank, the personal property of E. T. Barnette. Carried.”

## (VII)

That afterwards, to wit, on March 16th, 1908, by a written agreement, hereinafter set forth, between said copartners, including this defendant R. C. Wood, and said corporation, a valuation was placed on the assets of said partnership in excess of its total liabilities, at \$252,000.00, instead of \$288,000.00, as stated in said resolution, of which said sum this defendant R. C. Wood, by virtue of said partnership agreement would be entitled to \$13,000.00.

## (VIII)

That thereafter, to wit, on March 16, 1908, and for the purpose of effecting the transfer to it of the business of said copartnership upon the terms and conditions therein stated, the said copartners E. T. Barnette, James W. Hill and this defendant, R. C. Wood, entered into an agreement in writing, hereinbefore [7] referred to, with said Fairbanks Banking Company, a corporation, a copy of which said agreement is hereto attached and marked "Exhibit Two," and is made a part hereof by reference the same as if fully incorporated herein, by the terms of which said agreement said copartners, including this defendant, agreed to accept and said corporation agreed to issue to them in exchange for said partnership property, shares of the capital stock of said corporation in such amount as the assets of said copartnership should exceed its liabilities less the sum of \$200,000.00, which, by the term of said agreement amounted to \$52,000.00, of which said amount, under the agreement existing between said parties as aforesaid this defendant R. C. Wood was entitled to \$13,000.00.



## (IX)

That the resolutions aforesaid and said written agreement became and were an offer on the part of said corporation and an acceptance thereof on the part of said defendant, respecting the purchase and sale of the interest of said defendant in said copartnership, in exchange for \$13,000.00 worth of the capital stock of said corporation, or 130 shares thereof.

## (X)

That thereafter, to wit, on the 16th day of March, 1908, in pursuance of said resolutions and said written agreement there was issued in the name of this defendant, 130 shares of the capital stock of said corporation of the par value of \$100.00 per share, as evidenced by stock certificate number three, and the capital stock account on the books of said corporation was credited with the amount of said issue.

## (XI)

That this defendant R. C. Wood entered upon the discharge of his duties as cashier of said corporation early in April, 1908, and continued to act as such cashier until the close of business on June 30th, 1908, and at the time he so entered upon such duties, and continuously thereafter until said June 30th, 1908, said issue of [8] capital stock so made to him as aforesaid, was outstanding on the books and records of said corporation, of which this defendant had knowledge at the time, or by the exercise of reasonable care and diligence could have acquired knowledge.

## (XII)

That thereafter, to wit, on the said June 30th, 1908, and while this defendant was cashier of said corporation, he wrongfully, fraudulently, and in violation of the terms of said written agreement and of the rights of the creditors of said corporation as hereinafter set forth, cancelled or caused to be cancelled, said certificate of stock so issued to him as aforesaid, and made or caused to be made on the books of said corporation an entry charging the par value thereof, to wit, \$13,000.00, to the account of treasury stock, and at the same time issued or caused to be issued the certain certificate of deposit of said corporation, payable to himself in the sum of \$13,000.00, which said certificate of deposit this defendant the said R. C. Wood afterward cashed, by means whereof there was paid to him and by him withdrawn from the assets of said corporation the sum of \$13,000.00 in cash, and its issued capital stock reduced in a corresponding amount. That said certificate of stock was never reissued to any person but was thereafter continuously carried in the account of treasury stock on the books of said corporation.

## (XIII)

This plaintiff further alleges that at the time said written agreement was entered into and said transfer made in exchange for said capital stock, the assets of said copartnership, less said sum of \$200,000.00, did not exceed its liabilities in the said sum of \$52,000.00 or in any sum whatsoever, all of which was well known to the defendant or by the exercise of ordinary care could have been known to

him, and said transfer of the capital stock of said corporation in said amount of \$13,000.00 to this defendant, in exchange for his pretended share in said excess of assets was without any [9] consideration whatsoever, and said withdrawal by this defendant of said sum of \$13,000.00 from the assets of said corporation by means of the surrender of said certificate of stock as aforesaid, was without consideration and was wrongfully and fraudulently done in violation of the terms of said written agreement and of the rights of the creditors of said corporation as hereinbefore stated.

(XIV)

That at the time this defendant surrendered the certificate of stock so issued to him as aforesaid and received therefor said certificate of deposit, to wit, on the 30th day of June, 1908, said corporation was in a grossly insolvent condition and its assets then were and are now insufficient to pay its liabilities in full, the exact amount of which has never been determined, which said insolvent condition was well known to this defendant, or by the exercise of ordinary care could have been known by him on said June 30th, 1908. That at all times thereafter the said Fairbanks Banking Company (which afterward, on or about September 14th, 1910, was known as the Washington-Alaska Bank, as aforesaid) was insolvent and in a failing condition, although continuing actively in business as a bank in the city of Fairbanks, Alaska, until and including January 4th, 1911, at which last-named date said Washington-Alaska



Bank, formerly called Fairbanks Banking Company, ceased business.

(XV)

That on said January 4th, 1911, said Washington-Alaska Bank had liabilities in excess of \$1,037,296.13, consisting of amounts due depositors, other than banks, of \$921,357.56, and amounts due banks in excess of \$115,938.57, and the assets of said Washington-Alaska Bank were then and still are insufficient to pay said liabilities in full, and said liabilities are now in excess of \$556,735.98. That at all the times herein stated, the assets of said Washington-Alaska Bank, including its capital stock, were a trust fund for the benefit of its creditors, and this defendant [10] by his wrongful and fraudulent acts herein complained of, gave to himself a preference over the other creditors of said corporation, and reduced said fund and deprived said creditors, and is now depriving them of the benefits thereof, in the amount so withdrawn by him as aforesaid, to wit, \$13,000.00, no part of which has been restored by this defendant or in any other manner whatsoever.

(XVI)

That on January 5th, 1911, in a certain suit entitled "Tanana Valley Railroad Company, a corporation, and John Zug, Plaintiffs, vs. Washington-Alaska Bank, a corporation, defendant," commenced in said district court for the Territory of Alaska, fourth division, an order was duly given and made appointing F. W. Hawkins receiver of said Washington-Alaska Bank, who thereupon duly qualified and entered upon his duties as such receiver. That

thereafter on the 6th day of January, 1911, said district court by an order duly given and made appointed E. H. Mack jointly with said Hawkins, receiver of said Washington-Alaska Bank, and said Mack thereupon duly qualified and entered upon his duties as such receiver, and thereafter said Hawkins and Mack continued to be and act as receivers of said Washington-Alaska Bank until the 12th day of May, 1911, when said Hawkins and Mack resigned as such receivers, and thereupon on said last-named date said district court by an order duly given and made and entered appointed this plaintiff F. G. Noyes receiver of said Washington-Alaska Bank, and said F. G. Noyes thereupon duly qualified and entered upon his duties as such receiver, and ever since has been and now is the duly qualified and acting receiver of said Washington-Alaska Bank, and as such is plaintiff in this suit. That on the 8th day of May, 1912, and on the 31st day of March, 1913, said district court by orders duly made and entered, authorized and directed this plaintiff, receiver as aforesaid, to demand repayment for all stock surrendered by the stockholders of said corporation, including [11] that of this defendant and to enforce the same by suit if necessary. That on the 10th day of May, 1912, and again on the 4th day of April, 1913, in pursuance to said orders demand was made of this defendant for such repayment and by him refused.

(XVII)

The receiver of said Washington-Alaska Bank has collected and reduced to cash as far as possible the assets of said Washington-Alaska Bank, and

there has been declared and paid upon the acknowledged or proven liabilities of said bank, dividends aggregating fifty per cent, save and except that \$5469.82 of said dividends have not been called for, and approximately \$12,000.00 thereof which has been withheld by order of Court, and save also that to the Dexter Horton National Bank of Seattle to whom there has been paid thereon \$25,000.00, and that other creditors holding claims aggregating \$2072.14 have either not proven their claims or yet demanded their dividends.

(XVIII)

At the time said Washington-Alaska Bank ceased business, on January 4th, 1911, there was due and owing from said Washington-Alaska Bank to the said Dexter Horton National Bank of Seattle the sum of \$129,465.62, and the said Dexter Horton National Bank had in its possession all of the capital stock of the said Gold Bar Lumber Company referred to in "Exhibit Two" hereto attached and belonging to the said Washington-Alaska Bank, and said Dexter Horton National Bank claimed to hold said stock in said Gold Bar Lumber Company as collateral security to secure the payment to said Dexter Horton National Bank of said sum of \$129,465.62, now approximately \$104,465.62, and said Dexter Horton National Bank still has possession of said stock in said Gold Bar Lumber Company, and still so claims to hold the same as such collateral security for the amount so due it as aforesaid.

(XIX)

That at all times since the organization of said

Fairbanks [12] Banking Company, a corporation, afterward known as the Washington-Alaska Bank, as aforesaid, the sum of \$341,949.00 of its assets have been invested in the stock of the said Gold Bar Lumber Company, and said stock constituted a book asset of that amount when said Washington-Alaska Bank ceased business, and is still, subject to the claim made by Dexter Horton National Bank of Seattle, an asset of said Washington-Alaska Bank. Said F. G. Noyes as receiver of the Washington-Alaska Bank, plaintiff, owing to the fact that said stock in said Gold Bar Lumber Company is so held and claimed by said Dexter Horton National Bank, has been unable to sell or dispose of the same, and although he has made diligent attempt has been unable to obtain for said stock in said Gold Bar Lumber Company any offer in excess of \$132,000.00, and plaintiff alleges that if said stock in said Gold Bar Lumber Company, so belonging to said Washington-Alaska Bank, has any value in excess of \$132,000.00 it is of a wholly uncertain and speculative character.

(XX)

The only remaining assets of said Washington-Alaska Bank in said receiver's hands, out of which any further dividends to depositors and other creditors can be paid, are bills and notes and overdrafts due from various persons and corporations, of the face value of \$217,933.49; real estate and furniture and fixtures carried on the books of said corporation at \$46,605.88; stock in the Chena Milling, Smelting & Refining Company of the par value of \$1,000.00, and a claim against the Scandinavian-American



Bank of Seattle for \$17,886.05 in litigation. That said bills, notes and overdrafts, although of the face value of \$217,933.49, are not of that value. The whole amount thereof are past due and not to exceed approximately \$25,000.00 thereof are owing from solvent debtors or can be collected and the remainder thereof are bad, worthless and uncollectible. Said real estate, furniture and fixtures are not of the actual cash or market value of more than \$25,000.00 and said stock in said Chena Milling, Smelting & Refining Company has no actual or market value.

[13]

(XXI)

That by the laws of the State of Nevada under and by virtue of which the said Fairbanks Banking Company, a corporation, was incorporated, it is provided:

“Sec. 30. Every corporation in this state shall also have the power, whenever at any assessment sale of the stock of said corporation or sale for unpaid subscription or call no person will take the stock and pay the assessment, or amount unpaid and due thereon and costs, to purchase such stock and hold the same for the benefit of the corporation. All purchases of its own stock by any corporation in this State which have been previously made at assessment sales whereat outside parties have failed to bid, and which purchases were for the amount of assessments due, and costs or otherwise, shall be held valid, and as vesting the legal title to the same in said corporation. The stock so purchased shall be held subject to the control of the remaining stock-

holders who may make such disposition of the same as they may deem fit. Whenever any portion of the capital stock of any corporation is held by the said incorporation by purchase or otherwise, a majority of the remaining shares of stock in said corporation shall be held to be a majority of the shares of stock in said incorporated company, for all purposes of election or voting on any question before a stockholders' meeting.

Sec. 40. Every corporation organized under this act may change the nature of its business, change its name, increase its capital stock, change the par value of the shares of its capital stock, decrease its capital stock, change the location of its principal office in this State, extend its corporate existence, change the number of its directors or trustees, create one or more classes of preferred stock, and make such other amendments, change or alteration as may be desired, in manner following: The Board of Directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days' notice, given personally or by mail; if two-thirds interest of each class of the stockholders having voting powers and of other persons having like powers shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate, together

with the written assent, in person or by proxy, of two-thirds in interest of each class of such stockholders and creditors, if any, having voting powers, shall be filed in the office of the Secretary of State and upon the filing of the same and filing a certified copy of said certificate of amendment with the county clerk of the county where the corporation has its principal office, the certificate or articles of incorporation shall be deemed to be amended accordingly; provided, that such certificate of amendment, change or alteration shall contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and the certificate of the Secretary of State that such certificate and assent have been filed in his office shall be taken and accepted as evidence of such change or alteration in all courts and places; provided, also, that no amendment making or attempting to make paid-up stock issued as paid up or the holders thereof liable to assessment or for debts of the company shall be made. [14]

Sec. 41. Any corporation of this State, whether organized under this Act or by a Special Act of Incorporation or under general laws, excepting railroad corporations, may increase or decrease its capital stock, change its name, the par value of the shares of its capital stock, or the location of its principal office in or out of this State, and fix any methods of altering its by-laws permitted by this Act in the manner prescribed in the foregoing section, and any corporation may in the same manner relin-

quish one or more branches of its business, or extend its business to such branches as might have been inserted in its original certificate of incorporation; provided, that any corporation of this State, except railroad corporations, which has exercised any of the powers, or caused to be done any of its acts, hereinabove specified, in the manner provided by this Act, shall be deemed to have possessed such powers as fully and to the same extent as if they had been expressly conferred upon such corporation by the terms and provisions of this Act, and all such powers and acts are hereby ratified, confirmed and approved. (As amended, 1909, p. 198.)

Sec. 42. The decrease of capital may be effected by retiring or reducing any class of the stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender by every shareholder of his shares, and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation or by reducing the par value of shares; and when any corporation shall decrease the amount of its capital stock hereinbefore provided, by amendment pursuant to this and the two preceding sections, the certificate decreasing the same shall be published for three weeks successively, at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation (shall be jointly and



severally liable for all debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced; provided, no such decrease of capital stock shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted.)

(XXII)

That none of the things required by said laws to be done in the matter of reducing the capital stock of said corporation or retiring said shares so owned by this defendant, as aforesaid, were done, and said shares of stock so surrendered by said defendant to said corporation, were not purchased of said defendant by said corporation at any sale thereof for unpaid assessments, unpaid subscriptions or calls.

WHEREFORE, PLAINTIFF PRAYS that an accounting be had and taken by this Court, or by a master or referee appointed by this Court and under its supervision, to determine the amount due from [15] this defendant by reason of the matters and things herein set forth, and that plaintiff have judgment against this defendant for the sum of Thirteen Thousand Dollars, or so much thereof as may be found due, together with interest thereon from June 30th, 1908, at the rate of eight per cent per annum, and for such other and further relief as in equity he may be entitled to, and for costs, including a reasonable attorney's fee.

O. L. RIDER,  
Attorney for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn, deposes and says: I am the plaintiff named in the foregoing complaint; I have read said complaint, know the contents thereof, and believe the same to be true.

F. G. NOYES.

Subscribed and sworn to before me this 5 day of April, A. D. 1913.

[Seal]

W. F. WHITELY,

Notary Public in and for the Territory of Alaska,  
Residing at Fairbanks. [16]

**Exhibit "One."**

"KNOW ALL MEN BY THESE PRESENTS, that, WHEREAS, the organization of a corporation is contemplated by the undersigned under the laws of the State of Nevada, to be known as the Fairbanks Banking Company, with a capital stock of Three hundred thousand dollars, divided into three thousand shares of the par value of one hundred dollars each. The object of which said corporation is to carry on a general banking business in the town of Fairbanks, Alaska, and to absorb the present Fairbanks Banking Company, and such other banking institutions as may be deemed advisable; and WHEREAS steps are now being taken for the organization of such corporation under the laws of said State of Nevada, but owing to the distance between said State of Nevada and the town of Fairbanks, Alaska, considerable delay must necessarily

ensue before such corporation can be created and the organization thereof perfected; and WHEREAS, we, the undersigned, each and all of us are desirous of becoming stockholders in said corporation for the number of shares hereinafter by us set opposite our respective names, and are desirous that in order that the capital stock of said corporation shall be fully subscribed, and the names and number of stockholders of said new corporation may be known to us, that subscriptions for such stock should now be made.

NOW, THEREFORE, in consideration of the premises, we, the undersigned, do hereby promise and agree to and with each other and with said new corporation to be formed to be known as the Fairbanks Banking Company, to subscribe, and each of us do hereby subscribe of the capital stock of said Fairbanks Banking Company, the number of shares by us set opposite our respective names and that when said corporation is organized and the stock thereof issued to us we will either pay to the Treasurer of said corporation the par value thereof, or such an amount thereof as we can conveniently pay; or, in the event at said time we are unable to make any cash payment upon said stock, that each will give his promissory note for the individual amount of stock subscribed by him; one due on or before the first day of June, 1908, for twenty-five per cent of the amount of the capital stock subscribed by him, and the other for seventy-five per cent thereof, which shall become due and payable on or before the first day of July, 1908; said notes to bear interest

at the rate of one per cent per month from the date of the issuance of the stock. If at the time the stock shall be issued any of the undersigned shall pay thereof an amount equal to twenty-five per cent thereof, then such person is to execute his note for the remaining seventy-five per cent due on or before the first day of July, 1908. If said payment so made shall not equal twenty-five per cent of the par value thereof then such individual agrees to execute a note for the amount equal to twenty-five per cent thereof, which shall become due and payable on or before the first day of June, 1908, and a note for the remaining seventy-five per cent as hereinafter set forth. It is expressly understood and agreed that said corporation is to retain and remain the owners of stock until the same is fully paid.

IN WITNESS WHEREOF we have hereunto set our hands and seals this —— day of January, 1908.” [17]

#### AGREEMENT.

This Indenture, made and entered into this 16th day of March, 1908, by and between E. T. Barnette, James W. Hill and R. C. Wood, copartners doing business under the firm name and style of the Fairbanks Banking Company of Fairbanks, Alaska, the parties of the first part, and the Fairbanks Banking Company, a corporation organized, created and existing under and by virtue of the laws of the State of Nevada, party of the second part,

WITNESSETH: That, whereas, the parties of the first part as copartners since the month of May, 1905, have been engaged in carrying on and con-

ducting a general banking business in the town of Fairbanks, Alaska, under the name and style of the Fairbanks Banking Company, and is possessed at this time as a part of the property and business of said copartnership—

(a) Stock in the following corporations, namely:

1. Four-fifths of the entire stock of the Gold Bar Lumber Company, a corporation organized, created and existing under and by virtue of the laws of the State of Washington. The certificates of which were issued August the 14th, 1906, as follows: Certificate No. 11 to R. C. Wood, 24 shares; Certificate No. 12 E. T. Barnette, 48 shares; Certificate No. 13 James W. Hill, 24 shares. Said Certificates of Stock now being in the possession of the Scandinavian-American Bank of Seattle, Washington, and enjoined by Seattle Court from delivering. Said stock being of the value of \$341,949.00 as per statement hereto attached marked Exhibit "A."

2. The entire stock of the Tanana Publishing Company, a corporation organized and existing under and by virtue [18] of the laws of the state of Washington. Said stock being of the agreed value of \$12,000.00.

(b) of the following real estate:—

1. Bank building and lot of the agreed  
value of .....\$19,423.58
2. Warehouse of agreed value of ..... 3,360.00
3. Building and lot town of Cleary where  
a branch bank is being conducted;  
the agreed value of..... 1,695.50



4. Assay building and plant, agreed  
value of ..... 2,860.57

(c) Have outstanding loans and dis-  
counts of the value of ..... 353,842.54

All of which are evidenced by notes of the parties  
owing the same. A scheduled statement specifying  
the name of the debtor, and the face of the note is  
hereto attached and marked Exhibit "B." Some of  
which said notes are secured by mortgages upon real  
or personal property; and

(d) Overdrafts as appear upon the  
books of the parties of the first part, of  
the agreed value of ..... 8,326.75  
as per list attached marked Exhibit "C."

(e) Due from Banks as fol-  
lows:—

Bank of B. N. A. ....	2236.66	
Dome City Bank.....	714.42	
National Park Bank .....	790.61	
Seattle National Bank .....	3951.00	
Valdez Bank & Mercantile Co..	247.78	
Dexter Horton & Co.....	1240.40	
Amounting to the sum of.....		9,180.87

(f) Cash on hand amount-  
ing to ..... 35,774.38

(g) Gold-dust of the value  
of ..... 2,737.49

(h) Sundry other credits of  
the parties of the first part to  
the agreed value of ..... 637.34

Making the total resources of

the Bank as agreed upon by the parties hereto of the value of.. 790,940.31  
and,

Whereas, the liabilities of said parties of the first part are as follows:

- |                                   |            |
|-----------------------------------|------------|
| 1. Script now in circulation..... | 64,737.00  |
| 2. Deposits—Ordinary .....        | 356,677.92 |
| 3. Deposits—Savings .....         | 63,238.22  |

[19]

4. Due to Banks as follows:—

Alaska Bank & Safe Deposit Co....	273.44
Ladd & Tilton .....	355.96
Corn Exchange National Bank....	7,659.38
First National Bank, San Francisco	7357.09
Scandinavian American Bank....	12713.93
National Bank of Commerce.....	12.81
Cleary Branch .....	25919.56

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Making a total liability ..... 538940.31

And,

Whereas, the party of the second part was incorporated for the express purpose of taking over all of the property, real, personal and mixed of the parties of the first part, their business and good will (save and except the sum of \$200,000.00, the original capital of the parties of the first part, the same being the personal property of E. T. Barnette) to the valuation thereon placed, as heretofore set forth. And in consideration thereof was to assume and pay all the liabilities of the parties of the first part, as hereinbefore set forth; and

Whereas, E. T. Barnette of the parties of the first

part has personally belonging to him of the assets of the parties of the first part the sum of \$200,000.00, being the amount of the capital stock of the parties of the first part contributed to said co-partnership by the said E. T. Barnette; and it has been agreed that said sum of \$200,000.00 shall be repaid by the party of the second part to the said E. T. Barnette one year from the release of the said Gold Bar Stock from the injunction now in force against it; and that said E. T. Barnette during said time shall leave said amount upon deposit without interest with the party of the second part, provided, however, that in the event the party of the second part shall sell said Gold Bar Stock for cash, then the said sum of \$200,000.00 immediately upon receipt of said cash by the party of the second part shall become immediately [20] due and payable; and in the event that said Gold Bar Stock is not sold for cash, but part for cash and part on time, then the said E. T. Barnette shall be entitled to receive such a proportion of said sum of \$200,000.00 as the cash paid upon the purchase price of said Gold Bar Stock shall bear to the entire purchase price, and,

Whereas, owing to a certain action now pending in the Superior Court of the State of Washington, for King County, entitled J. H. Causten, Plaintiff, vs. E. T. Barnette, Defendant, in which said action the said Causten is seeking to be declared the owner of a certain part and portion of the capital stock of the Gold Bar Lumber Company issued in the name of E. T. Barnette, as heretofore set forth; and

Whereas, said litigation is now undetermined, and



the right of the said Causten to any part or portion of said stock of the Gold Bar Lumber Company is undetermined, and it is the desire of the said E. T. Barnette, and the party of the second part, that the said E. T. Barnette shall indemnify the party of the second part for any loss that may be sustained by reason of any adverse decision in the value of the Gold Bar Stock; and said E. T. Barnette has heretofore agreed that the sum of \$200,000.00 before mentioned shall also be security to the party of the second part under the conditions and terms set forth on page three of this agreement, against any adverse decision of the court in Causten vs. Barnette suit, as such decision may decrease the value of the Gold Bar property as accepted by the party of the second part; and

Whereas, the party of the second part has agreed with the parties of the first part to issue to them stock for the amount that the assets of said company shall exceed its liabilities less the sum of \$200,000.00, and the parties of the first part have agreed to accept the same, [21]

Now, therefore, for the purpose of carrying out the terms and agreements between the parties hereto, as hereinbefore set forth, this Indenture,

Witnesseth: That the parties of the first part for and in consideration of the foregoing and of other good and valuable consideration to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents assign, transfer and set over unto the party of the second part, four-fifths of the entire stock of the Gold Bar

Lumber Company, a corporation created and existing under and by virtue of the laws of the State of Washington, and agree to transfer and deliver to the party of the second part the Certificates of stock now owned by them as hereinbefore set forth as soon as they obtain possession of same; and do hereby assign, transfer and set over unto the party of the second part all of their right, title and interest in and to all and singular the property, real, personal and mixed of said Gold Bar Lumber Company situated at Gold Bar, Washington, or wheresoever situated according to statements hereto attached.

And the said E. T. Barnette personally agrees to and with the party of the second part that he will save the party of the second part harmless as to any decrease in the value of said Gold Bar Lumber Company Stock on account of the litigation now pending in the Court of Seattle entitled Causten vs. Barnette, and that the sum of \$200,000.00 shall remain upon deposit with the Fairbanks Banking Company upon the terms and conditions heretofore set forth on page 3 of this agreement, and the security to said party of the second part against any adverse decision of the court in said suit which may decrease the value of the Gold Bar property as accepted by the party of the second part.

The parties of the first part also hereby assign, transfer [22] and set over unto the party of the second part all of their stock in and to the Tanana Publishing Company, and the property that belongs to said corporation as heretofore agreed between the parties. It being understood that the stock of paper

now in the possession of the parties of the first part shall remain and be their property.

The parties of the first part hereby assign, transfer and set unto the party of the second part all their right, title and interest in and to the Bank Building and the lot upon which the same is situated, the warehouse situated thereon, the building and lot in the town of Cleary, and all the right, title and interest in and to the assay building and plant situated in Fairbanks, Alaska, and hereby agree that they will procure and execute the necessary deeds to transfer said real property. And the parties of the first part hereby agree that they will procure and execute the necessary deeds to transfer said real property. And the parties of the first part hereby assign, transfer and set over unto the party of the second part all and singular the personal property, fixtures, vault, safe deposit boxes, and stock in trade, apparatus and effects used in connection with the business of said bank, and the business and good will of the parties of the first part to the party of the second part, and to its assigns forever.

The parties of the first part hereby assign, transfer and set over unto the party of the second part all of their outstanding loans and discounts as the same appear in the scheduled statement hereto attached marked Exhibit "A," and the notes of the debtors given to evidence the amount of such loans and discounts, together with all mortgages upon real or personal property that have been given to secure the same, and hereby agree that they will transfer to the party of the second part by proper indorsement all

of said notes and mortgages and forthwith deliver the same into the [23] possession of the party of the second part.

Also all of the right, title and interest of the parties of the first part in and to all overdrafts as the same appear upon the list hereto attached marked Exhibit C, and all moneys due and owing the parties of the first part from the Banks mentioned in page 2 of this agreement; and likewise hereby transfer, assign and set over to the party of the second part all cash on hand now belonging to the parties of the first part; all gold-dust in their possession as the same appears on page 2 of this agreement, and all the property of the parties of the first part, real, personal or mixed that has this day been turned over to the party of the second part, and of which the party of the second part is now in the possession of.

The intention of this agreement being to place the party of the second part in the shoes of the parties of the first part as to the Banking Business of the Fairbanks Banking Company and as to all properties heretofore mentioned or specified.

To have and to hold unto the party of the second part, its successors and assigns, forever.

And the parties of the first part hereby authorize and empower the party of the second part, its successors and assigns, to perform all acts that may be necessary to protect and preserve the properties hereby assigned; and to bring all necessary actions at the cost of the party of the second part to enforce the collection thereof, or to protect the same.

And the said party of the second part in considera-



tion of the foregoing hereby covenant and agree to and with the parties of the first part that it will in due course pay all the debts and discharge all the liabilities of the said parties of the first part as the same are specified on [24] pages 2 and 3 of this agreement, and will at all times hereafter effectually keep indemnified the parties of the first part their executors and administrators and their assets and effects against all such debts and liabilities and all actions, proceedings, costs and expenses in respect thereto, and all costs and expenses by reason of any action or proceeding which may be instituted or taken by said party of the second part by virtue of the power or authority hereinbefore contained, or of anything relating thereto.

The party of the second part agrees to pay to E. T. Barnette the sum of \$200,000.00 as hereinbefore on page three of this agreement specified, save and except, however, that if a decision adverse to the said E. T. Barnette shall be rendered in said cause of Causten vs. Barnette and by reason thereof the value of the Gold Bar Stock shall be depreciated by reason of Causten being declared the owner of a part or portion thereof, then, the amount of such depreciation shall be deducted from said sum of Two Hundred Thousand Dollars.

The party of the second part hereby agrees that it will issue to the parties of the first part paid up stock to the amount they shall be entitled to under the terms of this agreement.

This agreement shall extend to and bind the heirs,

executors, administrators, successors and assigns of the parties hereto.

In witness whereof the parties of the first part have hereunto set their hands and seals, and the party of the second part by resolution of its Board of Directors has hereunto by its President and Secretary set its corporate name and seal this the 16th day of March, 1908.

JOHN L. MCGINN.

H. F. YEAGER.

E. T. BARNETTE. (Seal)

JAMES W. HILL. (Seal)

R. C. WOOD. (Seal)

FAIRBANKS BANKING COMPANY.

Signed, sealed and delivered in the presence of:

[25]

By E. T. BARNETTE.

President.

[Seal] Attest: B. R. DUSENBURY. Secretary.

United States of America,

Territory of Alaska.—ss.

This is to certify that on this the 16th day of March, 1908, personally appeared, E. T. Barnette, James W. Hill and R. C. Wood to me personally known to be the individuals described in and whose signatures are subscribed to the foregoing instrument and they acknowledged to me individually and not one for the other that they signed, sealed and delivered the said instrument freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal this the day and year hereinabove written.

[Seal]

JOHN L. McGINN,

Notary Public for Alaska. [26]

United States of America,  
Territory of Alaska,—ss.

This is to certify that on this the 16th day of March, 1908, personally appeared, before me E. T. Barnette and B. R. Dusenbury to me personally known and known to me to be the president and secretary, respectively of the Fairbanks Banking Company, the corporation named in the foregoing instrument as the party of the second part, and the said president executed the said instrument, and acknowledged to me that he signed, sealed and delivered the same by authority of the Board of Directors of said corporation, for the uses and purposes therein mentioned, and the secretary affixed the seal of said corporation thereto.

In witness whereof, I have hereunto set my hand and seal this day and year hereinabove written.

[Seal]

JOHN L. McGINN,

Notary Public for Alaska. [27]

### EXHIBIT "B"

#### LOANS AND DISCOUNTS.

2020	Altman, Max.....	2500.00
1236	Anderson Brothers.....	1165.00
1657	Asheim, Sam .....	618.58
2095	Armstrong, et al .....	11468.90
2093	“ “ .....	13785.80
2094	“ “ .....	3931.01

1849	Atchison, John .....	650.00
1975	Barrett, William .....	16855.85
1225	“ “ .....	16476.18
1435	Brazeau, Ben .....	400.00
1958	Balthuff & Sickinger.....	300.00
1334	Badger, H. M. ....	194.00
1931	Boker, J. E. ....	150.00
1523	Burke & Deal.....	100.00
1255	Barthel Brewing Co. ....	14000.00
1642	“ “ “ .....	3200.00
1587	Berger D. H.....	550.00
1110	Balzimer & McRae .....	800.00
1991	Bechtol, John J. ....	132.82
1795	Burnes, J. E. & Baird, J. F.....	47.00
1333	Badger, H. M. ....	735.00
2036	Courtemanche, Dave .....	500.00
1239	Cribb, Harry .....	1200.00
1240	“ “ .....	4000.00
2102	Cook & Co. ....	13326.62
2110	City Warrant .....	40.00
2111	“ “ .....	52.70
1613	Claypool, C. E. ....	1744.90
1943	Cleary, Frank .....	500.00
1696	Charles, P. G. ....	103.08
2053	Collins, John .....	300.00
2054	Craig, W. A. ....	2200.00
2049	Campbell, E. C. ....	200.00
1403	Clark, et al.....	800.00
1495	“ “ .....	250.00
1528	“ “ .....	1000.00
2088	Cook, H. ....	14392.90
2087	“ “ .....	3074.49



2086	“ “ .....	916.49
1786	Claypool, C. E. ....	150.00
1888	Clum, John P. ....	250.00
1699	Colbert, L. D. ....	96.87
280	Casey & Saylor.....	40.00
1521	Charles & Bernard .....	200.00
1163	Cathcart, Edgar .....	410.00
2085	Cook, H. ....	1965.50
645	Cloes, H. G. ....	158.50
2118	City Warrant .....	387.50
2117	“ “ .....	35.00
1393	Doring, H. ....	609.52
1254	Draper, Charles .....	75.00
1259	Evans & Porter .....	171.35
1858	Fairburn, L. A. ....	125.00
[28]		
1688	Fairburn et al .....	1700.00
1861	Fairburn “ .....	300.00
1544	Frost, Jas. ....	750.00
1733	Frost, Jas. ....	100.00
1891	Fairbanks Commission House.....	33.95
1937	Floradora .....	338.37
1530	Fairbanks Commission House.....	2000.00
1469	“ “ “ .....	212.50
1306	Gilcher, William .....	495.10
1994	Grant, H. G. ....	7.70
1591	Gelling & Bechtolt.....	1050.00
1753	Gaustad O. P. et al.....	175.00
2059	Green, V. O. ....	50.00
1952	“ “ .....	504.25
1939	“ “ .....	250.00
1926	“ “ .....	2332.34

2048	“ “ .....	50.00
1855	Gardiner, H. E. ....	2824.00
892	Gregg, Geo. ....	59.30
1721	Green, W. F. ....	1332.74
1854	Gallagher, Phil ....	150.00
1329	Guenther, O. J. ....	202.00
1808	Hutchinson, Geo. ....	300.00
1836	Hall, Frank ....	4000.00
1745	Hannum & Hamilton ....	1500.00
1155	Hudson, F. P. ....	125.00
1853	Hall, F. H. ....	75.00
1601	Howe, E. D. ....	157.25
1274	“ “ .....	150.00
1174	“ “ .....	150.00
2005	Hilliard, J. J., Jonas, D. H. ....	2000.00
2017	Heilig & Tozier ....	538.71
2055	Houlihan, J. C. ....	89.00
2006	Ingels, F. B. ....	2000.00
1900	Johnson, A. J. ....	200.00
1497	Johnson, Chas, et al ....	1000.00
1604	James, B. T. ....	2000.00
2069	Jonas & Brown.....	2000.00
1921	Johnstone, J. I. ....	450.00
1548	James, William ....	4301.00
2119	Jonas & Brown.....	300.00
2114	Johnson, John C. ....	450.00
1635	Keevey, et al ....	730.00
2022	Kellogg, Geo. ....	625.00
1489	Karstens, H. P. ....	100.00
1510	“ “ .....	100.00
1990	Lewis, L. T. ....	160.00
1632	Larsen, Alex. ....	797.71

552	Long, et al .....	50.00
1616	Lindsey, et al .....	200.00
1382	Longdon, W. C. et al .....	200.00
1911	Lund, et al.....	100.00
648	Long, et al.....	505.00
1846	Maltby, Alfred .....	88.75
1430	McPhee & Sheppard .....	7000.00
2113	McRae, D. D. ....	50.00
2104	MacCormack, J. W. Agt. ....	208.40
1683	Meehan & Kelly .....	450.00
2041	Moran, B. H. ....	500.00
2073	McIlroy, S. D. ....	250.00
[29]		
1653	McDowell, J. E.....	200.00
2032	McInroy, Chas. A. ....	344.18
2089	McGinn & Sullivan.....	3931.01
2090	“ “ .....	28180.28
2057	McMullen, M. H. ....	2000.00
1701	MacCormack, J. W. ....	300.00
1844	“ “ .....	45.00
1879	Markinson, et al.....	373.50
675	Morency, Al. ....	800.00
1907	McNeil, M. ....	500.00
1421	McCauley, C. D. ....	350.00
2016	McGowan, Thos. ....	1000.00
1585	McNeer, A. H. ....	1525.00
1988	MacArthur, Mrs. A. J. ....	2400.00
2076	Moe & Schroeder.....	230.00
2099	News Publishing Co. ....	262.50
1837	Nelson & Peterson.....	10000.00
2027	News Publishing Co. ....	509.75
2116	“ “ “ .....	442.79

1946	Overgaard, et al.....	275.00
1540	Propes, W. H. et al.....	261.50
1731	Petree, Dave .....	5500.00
1957	“ “ .....	2800.00
1356	Pres. Church .....	1050.00
774	Porter, W. H. ....	2070.33
2003	Rose & Kellum .....	750.00
2115	Royal Hotel .....	120.00
1593	Rutherford & Widman.....	2500.00
1878	Rusk, E. M. ....	250.00
1995	Roth, et al.....	1500.00
2101	Roy, H. T. ....	75.00
2091	Ridenour, J. C. ....	11236.90
2092	“ “ .....	1933.53
2097	Royal Hotel .....	180.00
656	Roberts, et al.....	50.00
2067	Red Cross Drug Store.....	3350.00
1376	Schaupp, Fred .....	4420.00
1606	“ “ .....	438.00
2103	“ “ .....	1245.81
1912	Slippern, J. A. ....	925.00
1525	Spencer, et al.....	1891.44
1260	Sullivan, M. L. ....	4500.00
2016	Smith, John C. ....	1000.00
1887	Sullivan, Jno. E. et al.....	250.00
506	Sorensen Bros. ....	450.00
1996	Str. White Seal .....	43.69
1940	St. George, H. E. ....	400.00
1984	Smith, Jos. H. ....	2000.00
1947	“ “ .....	3000.00
2064	Shephard, Robt. ....	5056.57
1692	Scott & Spencer .....	2000.00

1067	Sullivan, M. J. ....	300.00
1311	Stein, Abe ....	700.00
1304	Sorensen, Rufus ....	2824.00
2074	Shinkle, W. A. ....	1000.00
1899	Tanana Electric Co. ....	2600.00
2080	“ “ “ ....	25397.38
1380	Thompson, et al. ....	250.00
1583	Truitt, D. N. ....	1000.00
358	Timmerman, C. ....	105.00
1442	Thompson, W. F. ....	358.80
1686	Tharp, Rusk & Smith.....	2313.45
[30]		
2007	Tharp, Rusk & Smith.....	2500.00
2018	“ “ “ ....	1000.00
2008	Tharp & Rusk ....	2000.00
1787	Vedin, Gus. ....	1587.00
2035	Witte Pascal, et al.....	545.00
2106	Webb, W. A. ....	200.00
2079	Williams, A. J. ....	600.00
1063	Wickersham, Edgar ....	560.00
1993	Waters, Emile ....	40.00
1054	Morgan, J. et al.....	200.00
1820	Wilson, E. M. et al.....	100.00
1821	“ “ ....	100.00
1779	Wile, L. & Boas, A. ....	400.00
1922	Warren, Minnie ....	86.50
1778	“ “ ....	180.00
1629	Williams, E. & Dora.....	3000.00
2012	Young S. Hall ....	575.00
1391	Zimmerman, J. F. et al.....	900.00
2056	Zuber, Anthony, et al.....	650.00



1835	York, J. T. ....	100.00
216	“ “ .....	100.00
260	“ “ .....	500.00

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Total.....\$353842.54

### CLEARY BRANCH.

James Coyle & J. A. Grant.....	300.00
Al. Hilty .....	200.00
E. M. Bockfinger & P. A. Wilson.....	300.00
Gunner Nelson & C. Ericson .....	100.00
M. J. McDermott .....	200.00
John Hamilton, A. J. Nordale, John Flygar.	2820.00

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Total.....\$3920.00

[31]

### EXHIBIT "A."

#### STATEMENT OF THE GOLD BAR LUMBER CO., OCTOBER 1, 1907. RESOURCES.

Camp Equipment	31910.23
Horses and Wagons	501.06
Insurance	1686.60
Lumber	37679.68
Lighting Equipment	2808.45
Mill Site	5000.00
Mill Buildings	23403.58
Mill Equipment	68665.34
Northern Bank & Trust Co.	2080.22
Office Fur. & Fixt.	545.13
Real Estate	18400.00
Timber Lands	204956.05
Valley Supply Co. Stock	9574.16
Water System	10313.82
Accounts Receivable	18806.96

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Total Resources

436331.28

LIABILITIES

Bills Payable	68112.82
Wages due	6062.47
Accounts payable	3036.81

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Total Liabilities	77212.10
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NET RESOURCES 359119.18

GAINS.

Cook Camp	970.28
Lumber Sales	186738.10
Light Rents	79.25
Real Estate	47.32
Rents	2684.56
Valley Supply Co. Stock	4574.16
Water Rents	165.42

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Total Gains	195259.09
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LOSSES.

Depreciation Camp Equip.	3545.58
“ Horses and Wagons	55.67
“ Light Equipment	312.05
“ Mill Buildings	2600.39
“ Mill Equipment	7629.48
“ Furniture & Fixtures	60.57
Cruising Account	302.85
Camp Expense	4804.37
General Expense	9489.62
Interest & Discount	5807.22
Insurance	4382.36
Labor	125008.96
Mill Expense	6248.03
Profit & Loss	4554.93
Real Estate Repairs	391.28
Taxes	2619.40

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Total Losses	177812.76
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NET GAIN

17446.33

CAPITAL Stock Oct. 1, 1906	12000.00
Surplus “ “	329672.85

Net Resources Oct. 1, 1906.....	341672.85
Net Resources Oct. 1, 1907.....	359119.18
Add increase in value of Timber Lands-1/3	68318.68
	<hr/>
	427,437.86
4/5 interest value	341,949.00

[33]

STATEMENT OF THE CONDITION OF THE VALLEY SUPPLY CO.,  
Oct. 1, 1907.

## RESOURCES.

Cash	211.30	
Merchandise	11953.90	
Furniture and Fixtures	926.48	
Accounts Receivable	2652.42	
	<hr/>	
Total Resources		15744.10

## LIABILITIES.

Accounts payable	6169.94	
Total Liabilities		6169.94
		<hr/>
Net Resources Oct. 1, '07		\$9574.16

## PROFITS.

Merchandise	5833.46	
P. O. Receipts	266.87	
Interest & Discount	1563.38	
	<hr/>	
Total profits		7663.71

## LOSSES.

Expense	220.91	
Rent	800.00	
Labor	3034.02	
Depreciation Fur. & Fixt.	102.94	
	<hr/>	
Total losses		4157.87

Net Gain	3505.84	
Capital invested June 1, '06		6068.32

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9574.16

Net Resources Oct. 1, '07

[34]

## EXHIBIT "C."

## FAIRBANKS BANKING COMPANY.

## LIST OF OVERDRAFTS AS MARCH 16, 1908.

Asheim, S.....	\$ 37.11
Adcock, Mrs.....	240.06
Barnette, E. T.....	130.17
Barnette & Yarnell.....	1162.05
Boarman, F. B.....	2069.50
Chapman, G. H.....	5.00
Collins, John.....	7.45
Emberley, Isabelle.....	8.93
Fox, James.....	1.00
Higgins, Geo. G.....	50.00
Kearney, C. J.....	735.50
Kennedy, D. A.....	1.23
Kennedy, D. T.....	174.00
Matheson & Holmquist.....	1.25
Merrill, G. H.....	3.00
Morrison, Ronald.....	578.27
Monarch Association.....	289.20
MacCormack, Edith.....	14.05
McMullen, Ed.....	11.00
News Publishing Co.....	16.33
Steamer White Seal.....	9.75
Smith, A. T.....	52.26
Sigler, Chas. T.....	31.06
Scholling, G. L.....	2621.58
Scott & Spencer.....	14.04
Sullivan, M. L., Witness.....	18.25
Wisconsin Group Assn.....	43.75
Worman, C. N.....	1.00

[Indorsed]: No. 1894. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, a Corporation, Plaintiff, vs. R. C. Wood, Defendant. Complaint. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 5, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [36]

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[Title of Court and Cause.]

**Answer.**

Comes now the defendant and answering the complaint of the plaintiff on file herein, admits, denies and alleges as follows:

I.

Denies paragraph 3 of said complaint.

II.

Answering paragraph 4, defendant denies that he subscribed for 220, or any, shares of the capital stock of said corporation.

III.

Defendant denies paragraph 8 of said complaint, except as in the first further and separate answer hereinafter admitted.

IV.

Denies paragraph 9 of said complaint.

V.

Denies paragraph 10 of said complaint.

VI.

Answering paragraph 11 of said complaint, the defendant denies each and every allegation therein contained, except that said R. C. Wood entered upon the discharge of his duties as cashier of said corpora-



tion early in April, 1908, and continued as such to June 29, 1908.

### VII.

Denies each and every allegation, matter and thing contained in paragraph 12 of said complaint.

### VIII.

Denies each and every allegation, matter and thing contained [37] in paragraph 13 of said complaint.

### IX.

Denies each and every allegation, matter and thing contained in paragraph 14 of said complaint.

### X.

In answer to paragraph 15 of said complaint, this defendant says that as to whether or not on the 4th day of January, 1911, said Washington-Alaska Bank had liabilities in excess of \$1,037,296.13, consisting of amounts due depositors, other than banks, of \$921,357.56, and amounts due banks in excess of \$115,938.57, and that the assets of said Washington-Alaska Bank were then and still are insufficient to pay said liabilities in full, and said liabilities are now, or were in excess of \$556,735.98, this defendant has no knowledge or information sufficient to form a belief, and therefore denies the same.

As to the other matters and things alleged in said paragraph 15, this defendant denies each and every allegation thereof.

### XI.

Answering paragraph 16 of said complaint, this defendant denies that said F. G. Noyes thereupon or at all, duly qualified or entered upon his duties as receiver, or ever since has been or now is the duly

qualified and acting receiver of said Washington-Alaska Bank, or as such is plaintiff in this suit.

### XII.

As to the matters and things contained in paragraph 17 of said complaint, this defendant *denies* *has* any knowledge or information sufficient to form a belief, save and except that dividends aggregating fifty per cent of the proven liabilities of said bank have been paid.

### XIII.

As to the matters and things contained in paragraph 18 of said complaint, this defendant has no knowledge or information [38] sufficient to form a belief, and therefore denies the same.

### XIV.

Answering paragraph 19 of said complaint, this defendant denies that he has any knowledge or information sufficient to form a belief as to the matters and things therein contained, save and except that the Fairbanks Banking Company, afterward known as the Washington-Alaska Bank, had invested the sum of \$341,949 of its assets in the stock of the Gold Bar Lumber Company, and that the same constituted an asset for that amount at the time said Washington-Alaska Bank ceased business; and denies that if said stock of said Gold Bar Lumber Company has any value in excess of \$132,000.00 it is of a highly speculative and uncertain character.

### XV.

As to the matters and things contained in paragraph 20 of said complaint, this defendant has no knowledge or information sufficient to form a belief,

and therefore denies the same; save and except that he denies positively that of the whole amount of the bills, notes and overdrafts of said bank that are past due only about \$25,000 worth are due and owing from solvent debtors or can be collected, and that the remainder thereof are bad, worthless, and uncollectible.

## XVI.

As to the matters and things contained in paragraph 21 and paragraph 22 of said complaint, this defendant has no knowledge or information sufficient to form a belief, and therefore denies the same.

This defendant, for a first, further and separate answer and defense, alleges:

### I.

That in the fore part of January, 1908, a large number of business, professional and mining men of the Fairbanks Recording [39] District, Alaska, met in the town of Fairbanks, Alaska, for the purpose of organizing a corporation to purchase, take over and absorb the business of the Fairbanks Banking Company, a copartnership, and at said meeting negotiations were begun by said proposed incorporators with said partnership for the purchase of the same. That at said meeting a committee was appointed to go into the details of the reorganization of the Fairbanks Banking Company, and to report a basis upon which the business should be taken over.

### II.

That said committee met on the 5th day of January, 1908, and after investigating the affairs of the bank, made the following report to be presented for

the consideration of the proposed new corporation:

(a) That the issued stock for the proposed new corporation be as of date February 15, 1908; that notes be taken for all deferred payments; that the same bear interest at the rate of one per cent per month from February 15, 1908, until paid; that twenty-five per centum of the unpaid for stock be due and payable on or before June 1st, 1908, and that the balance be due and payable on or before July 1st, 1908.

(b) That captain E. T. Barnette and James W. Hill, with such associates as they may require, prepare a subscription list.

(c) That the amounts subscribed by any person be left to that person, and in case of over-subscription should be reduced proportionately.

(d) That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of \$288,000.00 in excess of its liabilities was placed, be accepted.

(e) That all notes, properties and securities which said board of trustees placed in the No. 3 or doubtful class remain the property of the old institution. [40]

(f) That all interest on existing loans as of December 19, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908.

(g) That should James W. Hill and R. C. Wood

not take the full forty-four thousand dollars in stock in the new corporation, the balance of the amount not so taken to be paid to them not later than July 1st, 1908.

(h) That the proposition of captain E. T. Barnette to leave on deposit with the new corporation the sum of two hundred thousand dollars, without interest for one year be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the Caustens vs. Barnette suit, in so far as such decision may decrease the value of the Gold Bar Company property as accepted by the present board of trustees.

(i) That the officers of the new corporation be a president, vice-president, second vice-president, cashier, assistant cashier, treasurer and secretary.

(j) That the number of the board of directors be twelve, four to be elected for six months, four for twelve months, and four for eighteen months or until their respective successors are duly elected and qualified.

(k) That dividends be declared semi-annually on June 30 and December 31.

### III.

That said report was, on January 6th, 1908, submitted to said proposed incorporators, and at said meeting the said report was read and passed on section by section, and on motion duly made and carried was adopted and ordered kept as a part of the records of said meeting. [41]

### IV.

That at said meeting it was also agreed on behalf



of the Fairbanks Banking Company, a copartnership, that said copartnership would turn over to said corporation the property of said Fairbanks Banking Company, a copartnership, on the terms specified in said report, and said proposed incorporators in behalf of said proposed corporation, in consideration thereof, agreed to assume the liabilities of said copartnership.

#### V.

That the articles of incorporation of said Fairbanks Banking Company did not arrive in Fairbanks until sometime in the month of March, 1908, and immediately thereafter a meeting of the stockholders of the Fairbanks Banking Company, a corporation, was called, and at said meeting said stockholders, among other things, adopted by-laws and elected a board of directors, and also passed a resolution to the effect that the matter of taking over the property of the Fairbanks Banking Company, a partnership, be left to the Board of Directors.

#### VI.

That immediately after the adjournment of said stockholders' meeting, the Board of Directors met and organized by the election of a president, vice-president, cashier, assistant cashier, secretary and treasurer, and at said meeting it was moved and duly seconded and carried "that the directors ratify the arrangement as to the taking over of the assets, property and business, and liabilities, of E. T. Barnette, James W. Hill and R. C. Wood, upon the terms and conditions set forth in the minutes of the meeting of the subscribers held January 5, 1908," which said

terms and conditions are set forth in paragraph 2 hereof.

## VII.

That at said meeting of the directors, a resolution was passed that the executive committee theretofore appointed at the meeting of the Board of Directors be empowered to see that all [42] papers and transfers be made properly by the officers of the old Fairbanks Banking Company, a partnership, and that such transactions be legally carried out.

## VIII.

That thereupon said executive committee met and went over the resources and liabilities of said Fairbanks Banking Company, a partnership, and instructed the attorneys of said corporation to prepare the necessary transfers conveying the property of said Fairbanks Banking Company, a partnership, to the corporation upon the terms and conditions set forth in the minutes of the meeting of January 5, 1908, save and except that certain notes which were then in existence were not to be turned over to the new corporation which thereby reduced the amount of shares of stock to be issued to said partners.

## IX.

That during all the negotiations heretofore mentioned the defendant, R. C. Wood was not in Alaska, and was either in the State of California or the State of Washington. That said Wood's name was signed to the original subscription list, without his knowledge, by E. T. Barnette, and with the understanding of all the subscribers that it was optional with the said R. C. Wood on his return to Fairbanks, Alaska,

to elect either to take stock in the new corporation, or to receive money for the amount of stock to which he was entitled in lieu thereof.

### X.

That in accordance with the directions of the Board of Directors made upon the 12th day of March, 1908, to the executive committee, the executive committee proceeded to have the necessary papers and transfers made out conveying the property of the partnership to the corporation on the terms stated in the resolutions of January 5, 1908, and requested that the then attorneys of the bank prepare the necessary papers for that purpose.

That in compliance with said request, the said attorneys [43] undertook to draw up an agreement stating the true terms and conditions of said sale and transfer, which is the agreement attached to plaintiff's amended complaint and marked Exhibit "1."

That said agreement, through the mutual mistake of the parties, the partners and the corporation, and without the fault of either, failed to set forth truly all the terms and conditions of the agreement between said Fairbanks Banking Company, a copartnership, and the corporation, in this: That said agreement failed to reserve to said copartners the accrued interest on all loans in existence on the 12th day of December, 1907, up to the 15th day of March, 1908, and, second, in that it failed to embody the option given to said James W. Hill and R. C. Wood either to take stock for their portion of the surplus property of the partnership, or to take money, and that

in the event of their desire to take money that the amounts should be paid to them not later than July 1st, 1908.

### XI.

That, with said exceptions, said agreement attached to plaintiff's amended complaint and marked Exhibit "1," fully sets forth the terms and conditions agreed upon and entered into between the Fairbanks Banking Company, a copartnership, and the corporation.

### XII.

That the value placed upon said assets of the partnership was the value placed thereon by the stockholders, and that the resolution of the stockholders of March 12, 1908, authorizing the directors to take over such assets contemplated only the execution of the formal papers necessary for the purpose of the transfer, and not that the directors should exercise their individual judgment in determining the value of such assets. [44]

### XIII.

That in accordance with the true agreement had between the copartnership and the corporation, The Fairbanks Banking Company, a corporation, issued to E. T. Barnette 260 shares of the capital stock of said corporation, and to James W. Hill 130 shares thereof, but no stock was ever issued or delivered to said R. C. Wood.

That said R. C. Wood returned to Fairbanks, Alaska, on or about the 14th day of April, 1908, and at once notified the said corporation of his election to take money in lieu of stock, and at said time, and



after reading said agreement of March 16, 1908, being Exhibit "1" attached to plaintiff's complaint, refused to sign the same for the reason that in said agreement it set forth that he had subscribed for stock. That at said time it was agreed between the said R. C. Wood and the said corporation that he should have the right to take cash instead of stock up to July 1, 1908, and at said time there was shown to said Wood by said corporation the report of the committee of January 5, 1908, and the minutes of the corporation of March 12, 1908.

#### XIV.

That said Wood signed the said agreement of March 16, 1908, marked Exhibit "2" attached to plaintiff's complaint, with the distinct understanding on his part and of the Fairbanks Banking Company, a corporation, that said report and minutes reserved to him the right to take money in lieu of stock; and it was never contemplated or understood by the said R. C. Wood or by the said corporation that by signing said agreement he would waive any right to take money in lieu of his stock.

#### XV.

That said Wood on or about the 17th day of April, 1908, entered upon his duties as cashier of said corporation, and continued as such cashier up until the 29th day of June, 1908. [45]

#### XVI.

That the Board of Directors and officers of said bank, in paying the money to said R. C. Wood, merely carried out the terms of the agreement entered into between said Wood and said corporation.



And defendant, for a second further and separate answer and defence to plaintiff's complaint, alleges:

I.

That the Fairbanks Banking Company, ever since the 21st day of January, 1908, was a corporation duly organized and existing under the laws of the State of Nevada, and engaged in the banking business in Fairbanks, Alaska, until the 4th day of January, 1911, when it closed its doors.

That said corporation was known as the Fairbanks Banking Company until about the month of October, 1910, when it changed its name to the Washington-Alaska Bank.

II.

That immediately upon the closing of the doors of said bank upon the 4th day of January, 1911, F. W. Hawkins and E. H. Mack were appointed receivers by this Court to take charge of and administer the estate of said bank, and they immediately entered upon the performance of their duties as such.

III.

That in the month of March, 1911, the then receivers of the Washington-Alaska Bank, formerly Fairbanks Banking Company, intended to bring a suit or action in the District Court for the Territory of Alaska for the Fourth Division, against E. T. Barnette, who had been the president of said Fairbanks Banking Company, and a director thereof, from the time of its organization as a corporation on March 12, 1908, until it closed its doors on January 4th, 1911, and as such was active and influential in the management and control of said Fairbanks

Banking Company. [46]

IV.

That at the time of the suspension of said bank, said E. T. Barnette was not within the Territory of Alaska, but shortly thereafter, and in the month of February, 1911, returned to Fairbanks, Alaska, and entered into negotiations with the creditors and depositors of said Washington-Alaska Bank and with the then receivers of said bank, for the purpose of amicably adjusting all suits and causes of action that might exist against the said E. T. Barnette on account of his liability to the creditors of said bank on account of his management thereof from the time of its organization on the 12th day of March, 1908, until the 4th day of January, 1911.

V.

That as a result of said negotiations, and in full satisfaction of all liability of the said E. T. Barnette to the creditors of said Washington-Alaska Bank for and on account of the acts and wrongs done by him, if any, during said time that he was president and director thereof, the said E. T. Barnette and Isabelle Barnette, his wife, executed an instrument in writing in which the said E. T. Barnette admitted his liability to the creditors and depositors of said bank and promised and agreed to pay all of the depositors and holders of unpaid drafts of said bank in full any deficiency that might be found to exist upon the 18th day of November, 1914, between the amounts due said depositors and holders of unpaid drafts on the 4th day of January, 1911, with interest thereon at the rate of 6 per cent per annum from

said January 4, 1911, until the same should be paid, and the amount realized out of the property and assets of said Washington-Alaska Bank and paid to said depositors and holders of unpaid drafts.  
[47]

#### VI.

That said Isabelle Barnette was and is the wife of said E. T. Barnette, and the said Isabelle Barnette joined in said instrument in writing because of her desire to aid her said husband in paying the creditors and depositors of said Washington-Alaska Bank.

#### VII.

That the said promises were made on the distinct understanding and agreement that no litigation would be instituted against the said E. T. Barnette or any other person or persons jointly liable with him for any act or deed done by him during the time that he was president and a director of said bank as aforesaid; and that, for the purpose of preventing any litigation, and as security for the faithful performance of the promises made by said E. T. Barnette and Isabelle Barnette, the said E. T. Barnette and Isabelle Barnette on the 18th day of March, 1911, with the knowledge, consent and approval of this Court, conveyed to the receivers of said bank, and the said receivers, by order of this Court, accepted a conveyance of title to an improved plantation consisting of 18,723 acres of land situate in the Republic of Mexico, and certain improved and income-producing business property and lots situate in the incorporated town of Fairbanks, Alaska, and

certain large interests in valuable association placer mining claims situate in the Fairbanks Recording Precinct, in said Territory of Alaska; all of which property belonged at the time of said conveyance to said E. T. Barnette and Isabelle Barnette, and were and are worth the sum of \$600,000, a sum greatly in excess of all the unpaid debts and liabilities of said bank.

### VIII.

That in said deed of property situated in the Republic of Mexico, as well as in said deed to property situated in Alaska, it is expressly provided that if the depositors and holders of unpaid drafts are not paid in full by the 18th day of November, [48] 1914, either out of the property and assets of said Washington-Alaska Bank or otherwise, or by the said E. T. Barnette and Isabelle Barnette, said receiver may sell all or any part of said land at private sale for the best possible price obtainable; and that the monies and funds derived from the sale of said properties shall then be paid to the depositors and owners of unpaid drafts in an amount sufficient to pay their claims and demands in full; and that, if the proceeds derived from the assets of said bank and the amounts realized from the sale of said properties shall be insufficient to pay said depositors and owners of unpaid drafts in full, then the same is to be disbursed amongst said depositors and owners of unpaid drafts pro rata; and that if the amount derived from the sale of said property shall exceed the amount sufficient to satisfy said amounts in full, with interest as above set forth, then the balance is



to be returned to said E. T. Barnette and Isabelle Barnette. And it is further provided in said deeds that if, after applying the monies received from the property and assets of said Washington-Alaska Bank, and the sale of said properties mentioned in said deeds, and any monies obtained from George Edgar Ward and W. B. Biggs on account of an option given to them upon the 18th day of November, 1909, to purchase an undivided 49/100 interest in and to said Mexican property for the sum of approximately \$225,000, there shall still remain a balance due said depositors and holders of unpaid drafts, the said E. T. Barnette and Isabelle Barnette promise and agree to pay said balance in full.

#### IX.

That in said deed of the property situated in the Territory of Alaska, the receivers and their successors are authorized and empowered to take possession of the same and to receive and collect the rents, royalties and issues thereof, and disburse the same to the depositors and holders of unpaid drafts, under [49] the orders of this Court; and that, in the event the said E. T. Barnette and Isabelle Barnette and the said receivers or their successors deem it at any time advisable to sell any of the said real estate situated in Alaska, that the same may be done by said receivers, and the proceeds derived from such sale disbursed to the depositors and holders of unpaid drafts, under the orders of this Court.

#### X.

That the said receiver, plaintiff herein, holds a large amount of property belonging to said bank,



which is of great value, and has not been converted into money; and said property so held by him, and the property conveyed to the receivers by said E. T. Barnette and Isabelle Barnette, are more than sufficient to satisfy all the claims, demands and obligations of creditors of said Washington-Alaska Bank.

### XI.

That on the 29th day of March, 1911, the then receivers of said Washington-Alaska Bank, agreed to accept in full satisfaction of the liability of said E. T. Barnette to the creditors of said Washington-Alaska Bank the said deeds of said property upon the terms and conditions thereof and the said promises of the said E. T. Barnette and Isabelle Barnette therein, and the said E. T. Barnette and Isabelle Barnette made, executed and delivered said deeds and made the said promises contained therein upon the distinct understanding and agreement that the same were in full satisfaction of all suits or causes of action then existing against said E. T. Barnette on account of any and all matters and things arising from his connection or management of the affairs of the said Fairbanks Banking Company, afterward known as Washington-Alaska Bank, and in full satisfaction of all liability of the said E. T. Barnette to the creditors of said Washington-Alaska Bank; and that said receivers accepted and received said promises and said deeds to said property, under order of this Court, in full satisfaction [50] of all claims and causes of action of whatsoever nature that existed against the said E. T. Barnette for and on account of his management of the affairs of said

bank from the 12th day of March, 1908, to the 4th day of January, 1911, and for and on account of his acts as president, and as a director of said corporation.

## XII.

That the receivers of said Washington-Alaska Bank, before the delivery and acceptance of said deeds hereinbefore mentioned, intended to, and if said agreement and deeds had not been made, executed and delivered to said receivers as hereinbefore stated, would have instituted an action against said E. T. Barnette to recover from said E. T. Barnette the sum of \$13,000 which was paid to defendant R. C. Wood by said Fairbanks Banking Company on the 30th day of June, 1908.

## XIII.

That the promises of said E. T. Barnette and Isabelle Barnette, and the deeds to the property hereinbefore mentioned, were given by the said E. T. Barnette and Isabelle Barnette upon the express understanding and agreement that the same were in full satisfaction of any liability of the said E. T. Barnette on account of the payment by said corporation of said sum of \$13,000.00 to said R. C. Wood, and in discharge of any causes of action against said E. T. Barnette for or on account thereof; and the same was accepted by the receivers of said bank upon the distinct understanding and agreement that the same was in full satisfaction of the liability of the said E. T. Barnette to the creditors of said bank on account of the payment of said sum of \$13,000 to said R. C. Wood, and in full discharge of said E. T.

Barnette on any causes of action that might arise therefrom.

#### XIV.

That the receivers have received from the rents, royalties and issues of the property situated in the Territory of Alaska the sum of \$31,400;

That the value of the property situated in the town of Fairbanks, Alaska, is the sum of \$25,000.

That the value of the mining property situate in the Fairbanks Recording District, Alaska, is the sum of \$20,000.

That the value of the Mexican property cannot be definitely determined at this time, but the same is of great value [51] and was, at the time of the execution of said deed, of the value of \$500,000.

#### XV.

This defendant alleges that the receivers have received full and complete satisfaction of any and all claims against this defendant for and on account of the payment to him by the Fairbanks Banking Company of the sum of \$13,000 from the said E. T. Barnette.

That this defendant, for a third further separate answer and defence, alleges:

##### I.

That the plaintiff is not entitled to any relief in this action for the reason that the said Washington-Alaska Bank has been guilty of laches in not sooner demanding payment from defendant.

That said Fairbanks Banking Company has acted as the owner of said 130 shares of stock ever since its organization, and the stockholders thereof by reason

of the same being owned by said bank have received the benefit thereof.

That this defendant has never been considered or regarded as a stockholder of said Fairbanks Banking Company by said corporation, and has in no way participated in the business of said corporation as an officer thereof since the 29th day of June, 1908, except for a short time he was a director thereof, and at no time has exercised the rights of a shareholder of said corporation.

That the defendant cannot be restored to the position that he was in at the time he received the \$13,000 from the Fairbanks Banking Company in the month of June, 1908; and the said Fairbanks Banking Company and the alleged receiver thereof have never tendered or offered to return or restore the stock which it is claimed by the plaintiff in this action belonged to this defendant, but which this defendant denies. [52]

That said corporation cannot be permitted to retain the shares of stock, and at the same time recover from the defendant herein said sum of \$13,000.

And, therefore, this defendant says that plaintiff is estopped by reason of the foregoing, from claiming the relief prayed for in his complaint.

WHEREFORE defendant asks that plaintiff take nothing by this action, and that he have judgment for his costs and disbursements herein.

A. R. HEILIG,  
JOHN L. MCGINN,  
Attorneys for Defendant.

R. C. WOOD, being first duly sworn, deposes and says: That I am the defendant in the above-entitled action that I have read the foregoing answer, know the contents thereof and believe the same to be true.

R. C. WOOD.

Subscribed and sworn to before me this 1st day of June, 1914.

[Seal]

ALBERT R. HEILIG,  
Notary Public for Alaska.

Commission expires June 18, 1917.

[Indorsed]: No. 1894. District Court, 4 Division, Territory of Alaska. F. G. Noyes, Receiver, vs. R. C. Wood, Answer. Filed in the District Court, Territory of Alaska, 4th Div., Jun. 2, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.  
[53]

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[Title of Court and Cause.]

**Reply.**

**I.**

Comes now the plaintiff and for reply to the first, further and separate answer and defense of said defendant says:

First. That he denies each and every allegation and statement therein contained except those hereinafter expressly admitted or otherwise denied.

Second. That he admits paragraphs I, II, III, IV, V, VI, VII, and VIII thereof.

Third. He admits that during the negotiations mentioned in said paragraphs I, II, III, IV, V, VI, VII, VIII the defendant was not in the Territory of Alaska and that he was neither in the State of



California or the State of Washington;

Fourth. He admits that there was issued to E. T. Barnette 260 shares of the capital stock of said corporation and to James W. Hill, 130 shares thereof.

Fifth. He admits that the defendant signed the agreement of March 16th, 1908, being exhibit number two attached to the plaintiff's complaint.

## II.

For reply to the second further and separate answer and defense, plaintiff says:

First. He denies each and every allegation and statement therein contained, except as hereinafter expressly admitted;

Second. He admits paragraphs I and II thereof;  
[54]

Third. He admits that E. T. Barnette was President of the Fairbanks Banking Company and a director thereof from the time of its organization on March 12th, 1908, until it closed its doors on January 4th, 1911, and that as such he was active and influential in the management and control of said bank;

Fourth. He admits that at the time of the suspension of said bank the said E. T. Barnette was not within the Territory of Alaska, and that in the month of February, 1911, he returned to Fairbanks, Alaska;

Fifth. He admits that Isabelle Barnette was and is the wife of the said E. T. Barnette and that she joined him in the deeds of conveyance therein referred to;

Sixth. He admits the conveyance to the former

receivers herein of title to the property referred to in said answer, and that he has taken possession thereunder of the property therein described and located in the Territory of Alaska;

Seventh. He admits that he has received the rents, royalties and issues of said property situated in the Territory of Alaska, and he alleges that the net amount thereof so received by him up to June 1st, 1914, is approximately \$31,478.65, less such reasonable charge as may be allowed for the collection thereof as provided in said conveyance.

### III.

For reply to the third further and separate answer and defense, plaintiff says:

First. He denies each and every allegation and statement therein contained, except those herein-after expressly admitted or otherwise denied;

Second. As to whether or not the Fairbanks Banking Company or its former receivers ever tendered or offered to return or restore the stock which is claimed by the plaintiff in this action to belong to this defendant, this plaintiff has neither knowledge [55] nor information sufficient to form a belief and therefore denies the same;

Third. For further reply he says that the certificate of stock which was issued to this defendant, referred to in the complaint, was with the knowledge and consent of this defendant cancelled on the 30th day of June, 1908, as set forth in said complaint, and neither this plaintiff nor the former receivers of said bank have or had any authority to issue shares of the capital stock of said bank to this defendant.

Fourth. He further says that for the reason that defendant denies that said stock ever belonged to him or that he ever subscribed for the same, it would be now and at all times prior hereto would have been futile to offer said shares to this defendant;

Fifth. He further says that as charged in the complaint, no consideration ever passed from this defendant to said bank for said shares of stock, and that no consideration ever passed from this defendant to said bank in return for said Thirteen Thousand Dollars withdrawn from the assets of said bank by this defendant as charged in the complaint, and that by reason thereof there never was in the possession of said bank or of its former receivers nor is there now in the possession of plaintiff as receiver, anything to restore or return to this defendant.

WHEREFORE plaintiff prays that he have judgment against the defendant according to the complaint herein.

O. L. RIDER,  
Attorney for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn, deposes and says: That as receiver, he is plaintiff named in the foregoing reply; that he has read said reply, knows the contents thereof, and believes the same to be true.

F. G. NOYES.

Subscribed and sworn to before me this 4th day of June, 1914.

L. D. BENNETT,  
Notary Public in and for the Territory of Alaska.

My Commission expires June 24, 1916. [56]

Service of copy is hereby acknowledged this 4 day of June, 1914.

J. L. McGINN and  
A. R. HEILIG,  
Attorneys for Defendant.

[Indorsed]: No. 1894. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, as Receiver of the Washington-Alaska Bank, Plaintiff, vs. R. C. Wood, Defendant. Reply. Filed in the District Court, Territory of Alaska, 4th Div. Jun. 4, 1914. Angus McBride, Clerk. [57]

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[Title of Court and Cause.]

**Findings of Fact and Conclusions of Law.**

BE IT REMEMBERED, that on the 8th day of June, 1914, the above-entitled cause came on regularly for trial before the Court without a jury, upon the issues as joined between the plaintiff and the defendant; the Honorable F. E. Fuller, Judge of said court, presiding; the plaintiff appearing in person and by his attorney O. L. Rider, and the defendant appearing in person and by his attorneys John L. McGinn and A. R. Heilig.

AND THEREUPON the plaintiff and defendant in open court agreed to submit the issues herein for final determination upon the testimony adduced and the admissions of the parties contained in the pleadings herein, and upon the testimony, so far as the same is applicable to said issues, heretofore introduced and received by the Court in cause number 1756 entitled, "F. G. Noyes, receiver of the Washington-Alaska Bank, a corporation, plaintiff, vs. J. A.

Jesson et al., defendants," pending in said court.

AND THEREUPON the Court, after hearing the allegations, testimony and proofs of the respective parties, and the arguments of counsel, and being fully advised in the premises, does hereby make and file, as constituting its decisions in said cause, the following Findings of Fact and Conclusions of Law:

I.

That the Washington-Alaska Bank, of which the plaintiff is receiver, was incorporated under the laws of the State of Nevada on the 21st day of January, 1908, with an authorized capital [58] stock of \$300,000.00 divided into 3,000 shares of the par value of \$100.00 each; that said bank was incorporated under the name of the Fairbanks Banking Company; and that subsequently, by amendment to its Articles of Incorporation, said name was changed to Washington-Alaska Bank.

II.

That said bank commenced business in the town of Fairbanks, Alaska, on the 16th day of March, 1908, with a subscribed capital of \$206,000.00, part of which was paid for in cash, part in property, and the balance by the promissory notes of the subscribers.

III.

That prior to the 21st day of January, 1908, subscriptions for said capital stock were circulated, and the following persons among others, subscribed for shares thereof, to wit, E. T. Barnette, 440 shares; R. C. Wood, 220 shares; James W. Hill, 220 shares; the name of R. C. Wood being subscribed thereto by



said E. T. Barnette.

#### IV.

That prior to the incorporation of said bank, the said Barnette, Hill and Wood, as copartners, were conducting a banking business in said town of Fairbanks under the firm name and style of Fairbanks Banking Company, which said company in December, 1907, owing to financial difficulties, was unable to meet its obligations and was compelled to suspend business and close its doors, and was at the time of the organization of said corporation, conducting business upon a scrip basis, and the securities belonging to the firm were in the hands of trustees to secure such scrip.

#### V.

That said corporation was organized, among other things, for the purpose of taking over the business and affairs of said partnership and assuming the outstanding obligations. [59]

#### VI.

That the capital of said partnership was \$200,000.00, which belonged to said Barnette, and the agreement existing between said partners was that the profits of said partnership were to be divided, one-half to said Barnette, and one-fourth each to said Hill and Wood.

#### VII.

That thereafter, and in the fore part of January, 1908, a large number of business, professional and mining men of the Fairbanks Recording District, Alaska, met in the town of Fairbanks, Alaska, for the purpose of organizing a corporation to purchase and

take over and absorb the business of the Fairbanks Banking Company, a partnership, and at said meeting negotiations were begun by said proposed incorporators with said copartnership for the purchase of the same. That at said meeting a committee was appointed to go into the details of the reorganization of the Fairbanks Banking Company, and to report a basis upon which the business should be taken over, two of the members of this committee having been members of the committee of depositors which had in December examined the assets.

#### VIII.

That said committee met on the 5th day of January, 1908, and, after investigating the affairs of the bank, made the following report to be presented for the consideration of the proposed new corporation;

(a) That the issued stock for the proposed new corporation be as of date February 15, 1908; that notes be taken for all deferred payments; that the same bear interest at the rate of one per cent per month from February 15, 1908, until paid; that twenty-five per centum of the unpaid for stock be due and payable on or before June 1st, 1908, and that the balance be due and payable on or before July 1st, 1908. [60]

(b) That Captain E. T. Barnette and James W. Hill, with such associates as they may require, prepare a subscription list.

(c) That the amounts subscribed by any person be left to that person, and in case of over-subscription should be reduced proportionately.

(d) That the notes, properties and securities of

the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of \$288,000.00 in excess of its liabilities was placed, be accepted.

(e) That all notes, properties and securities which said board of trustees placed in the No. 3, or doubtful class remain the property of the old institution.

(f) That all interest on existing loans as of December 19, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908.

(g) That should James W. Hill and R. C. Wood not take the full forty-four thousand dollars in stock in the new corporation, the balance of the amount not so taken to be paid to them not later than July 1st, 1908.

(h) That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of two hundred thousand dollars, without interest for one year, be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the Caustens vs. Barnette suit in so far as such decision may decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees.

(i) That the officers of the new corporation be a president, vice-president, second vice-president,

cashier, assistant cashier, treasurer, and secretary.  
[61]

(j) That the number of the Board of Directors be twelve, four to be elected for six months, four for twelve months, and four for eighteen months or until their respective successors are duly elected and qualified.

(k) That dividends be declared semi-annually on June 30, and December 31.

#### IX.

That said report was, on January 6th, 1908, submitted to said proposed incorporators, and at said meeting the said report was read, and passed on section by section as read, and on motion duly made and carried was adopted and ordered kept as a part of the records of said meeting.

#### X.

That at said meeting a subscription list, a copy of which is set forth in paragraph 3 of the amended complaint in this cause, was presented and signed by said proposed incorporators, setting forth the amount for which each respectively subscribed.

#### XI.

That at said meeting it was also agreed on behalf of the Fairbanks Banking Company, a copartnership, that said partnership would turn over to said corporation the property of said Fairbanks Banking Company, a partnership, on the terms specified in said report, and said proposed incorporators in behalf of said proposed corporation, in consideration thereof, agreed to assume the liabilities of said partnership.

## XII.

That said Fairbanks Banking Company, a corporation, became such on the 21st day of January, 1908. That on the 8th day of February, 1908, a meeting of the subscribers of the capital stock of the Fairbanks Banking Company was held for the purpose, among others, of obtaining notes of the subscribers for the stock subscribed by them, and, at said meeting, said stock notes were subscribed by said subscribers of stock and delivered to said corporation. [62]

That at the time of said meeting the Articles of Incorporation of said Fairbanks Banking Company had not been received from the State of Nevada, and for the purpose of expediency it was deemed advisable to elect a Board of Directors, and twelve directors were elected at said meeting, and it was agreed that said Board of Directors should act as such until the arrival of the Articles of Incorporation, when a formal meeting would be held and proper by-laws be adopted.

## XIII.

.. That said Articles of Incorporation did not arrive in Fairbanks until sometime in the month of March, 1908, and immediately thereafter a meeting of the stockholders of the Fairbanks Banking Company, a corporation, was called, and at said meeting said stockholders, among other things, adopted by-laws and elected a Board of Directors; and also passed a resolution to the effect that the matter of taking over the property of the Fairbanks Banking Company, a partnership, be left to the Board of Directors.

That on the 12th day of March, 1908, at said meet-



ing of the subscribers to said capital stock, said subscriptions were accepted by them and the above-named Barnette, Hill and Wood, together with the other subscribers, were declared to be stockholders of the said corporation. The defendant Wood was not present at said meeting, but he was notified of the result of the same by the said Hill.

#### XIV.

Subsequently, at a meeting of the stockholders of said corporation, it was resolved that the matter of taking over the business and affairs of said partnership be left to the Board of Directors. Thereafter, on March 12, 1908, at a meeting of the Board of Directors, said matter was considered by them and the resolutions of the proposed stockholders, set out in Finding VIII hereof, were by said directors adopted and approved, except that [63] the resolution providing for the payment of accrued interest up to February 15, 1908, was by them amended so as to read "March 15, 1908." At said meeting it was ordered by said Board of Directors that stock issue to said Barnette, Hill and Wood in exchange for the property received from them by said corporation, as follows: Barnette, 440 shares; Hill, 220 shares; Wood, 220 shares.

#### XV.

That on the 16th day of March, 1908, a written agreement was entered into between said corporation and said partners, and on the same day the same was signed by the said Barnette and Hill, and also on behalf of said bank by its president and secretary, wherein the valuation of the resources of said part-

nership was fixed at \$790,940.31 and its liabilities at \$538,940.31, leaving an excess of \$252,000.00 belonging to the said Barnette, Hill and Wood, in which said agreement the said Barnette, Hill and Wood agreed to accept stock of the corporation at its par value for the amount of assets in excess of said liabilities, except \$200,000.00 thereof should be placed to the credit of the said Barnette as a special deposit with said corporation upon the terms therein stated. By the terms of said agreement the amount of stock to be issued to Barnette, Hill and Wood was fixed at \$52,000.00 instead of \$88,000.00 as contemplated by said resolution and subscription, thus entitling Barnette to 260 shares and Wood and Hill each to 130 shares. A copy of said agreement is annexed to plaintiff's complaint and marked "Exhibit One."

#### XVI.

That at the time said agreement was entered into, the said Barnette was president of the said corporation and also a member of the Board of Directors; the said Hill was a member of its executive committee and also its vice-president, and the said Wood was its cashier. That said Barnette, Hill and Wood were also members of the partnership with which the said corporation [64] contracted respecting the matters set forth in said agreement, and were each personally interested therein adverse to said corporation.

#### XVII.

That the matter of preparing the papers for the transfer of said property belonging to said partnership to said corporation was, by the Board of Di-

rectors, left to the executive committee, and the said executive committee examined the affairs of said partnership, and, under their direction, said written agreement was prepared and afterward submitted to the Board of Directors for approval, and by them approved.

### XVIII.

That according to the by-laws of said corporation, the said executive committee had the same powers as the Board of Directors, subject to the approval of their acts by said Board of Directors.

### XIX.

That at the time said written agreement was signed and executed, and during all of the negotiations leading up to the making of the same, the defendant Wood was in Seattle, Washington, but he was advised fully concerning the same by the said Hill by letter and by telegram.

### XX.

That prior to the return of said Wood to Fairbanks, to wit, on the 29th day of February, 1908, he offered to sell his stock in said corporation and to take in payment therefor part cash and a note for the balance, to be secured by said stock as collateral security.

### XXI.

That the defendant Wood returned to Fairbanks, Alaska, some time in the month of April, 1908, and, upon his return, he signed said written agreement so entered into as aforesaid, knowing [65] that the same contained said clause requiring him to take stock for his share of the assets of said partnership

so transferred to said corporation in excess of the liabilities thereof as aforesaid, and also knowing that the same did not provide for the payment of said accrued interest, but with an oral understanding between himself and the officers of said bank that he might have, in accordance with said resolution, until July 1st, 1908, to elect either to take stock in said corporation or cash for his share of the assets of said partnership so transferred to said corporation.

## XXII.

That of the loans and discounts transferred by said partnership to said corporation, a large amount were then past due, of which then past due paper the sum of \$69,908.94 now remains in the hands of the receiver unpaid and uncollectible, which said loans and discounts were accepted by the directors of said corporation at their face value, and the same were included in those on which the accrued interest referred to in said resolution, was afterward computed.

## XXIII.

That of said notes so past due as aforesaid, there were two executed by the Tanana Electric Company in the sum of \$27,997.38, which depended for their value upon the existence of an alleged guaranty of the Scandinavian-American Bank to make advancements sufficient to cover the same; that said alleged guaranty never had any existence in fact, and the claim therefor had been repudiated by said Scandinavian-American Bank prior to the time said note was accepted by said Board of Directors, and said repudiation was known to the members of said board. That said notes are still unpaid, and the same was

at all times carried on the books of the said Washington-Alaska Bank, formerly Fairbanks Banking Company, as an asset in the sum of \$27,997.38. [66]

#### XXIV.

That said Board of Directors and the officers of said bank accepted said notes of the Tanana Electric Company and paid therefor the sum of \$27,997.38.

#### XXV.

That among the other assets of said partnership so accepted by said officers and directors was four-fifths of the capital stock of the Gold Bar Lumber Company, a corporation existing in the State of Washington, which said stock was accepted and paid for at the valuation of \$341,949.00, and said stock was at all times during the existence of said corporation carried as an asset in said sum.

#### XXVI.

That at the first meeting of the Board of Directors, held on the 12th day of March, 1908, the defendant Wood was elected cashier of said bank, at which time he was then in the city of Seattle, Washington, as aforesaid. Immediate notice was given to him of said election.

#### XXVII.

That said Wood accepted said office of cashier while in the said city of Seattle, and, on the 16th day of March, 1908, entered upon the discharge of his duties as such cashier, and, upon his return to said Fairbanks in April, 1908, as aforesaid, entered actively upon such duties and continued to so act until June 29, 1908, when he tendered his resignation as such cashier, and the same was accepted by the



Board of Directors to be effective at the close of business on June 30, 1908, and one B. R. Dusenbury, who was then assistant cashier, was elected to succeed Wood as cashier.

### XXVIII.

That at the time said Wood tendered his resignation as cashier, as aforesaid he demanded that there be paid to him the [67] amount of his interest in said partnership assets, to wit, \$13,000.00

### XXIX.

That a certificate for 130 shares of the capital stock of said corporation had been written up in the name of the defendant Wood, of the par value of \$13,000.00, but the same was never detached from the stock book. That said 130 shares were carried on the books of said bank as outstanding stock from March 16, 1908, to June 30, 1908.

### XXX.

That on the 30th day of June, 1908, with the knowledge, consent and approval of the officers and directors of said bank, a certificate of deposit was issued to and accepted by the said Wood in the sum of \$13,000.00, in lieu of said stock, which said certificate was signed by the said B. R. Dusenbury as assistant cashier prior to the time when the said resignation of the said Wood as cashier became effective, and said shares of capital stock were on the same day charged to treasury stock on the books of said bank.

### XXXI.

That subsequently the said Wood drew out in cash from the funds of said bank the amount of the said

certificate of deposit, to wit, \$13,000.00.

### XXXII.

That of the notes accepted from said partnership, as aforesaid, and paid for by said corporation, there were charged on December 31, 1907, by said partnership on the books of said partnership to an account known as "doubtful account" the sum of \$22,979.99, and said doubtful account, so including said notes in said amount, was then depreciated on the said books to the amount of thirty-three and one-third per cent thereof, which said notes were accepted by said corporation and paid for by them in the [68] amount aforesaid, to wit, \$22,979.99, all of which said notes were then past due, and of which there still remains unpaid and uncollectible the sum of \$12,860.61.

### XXXIII.

That on March 23, 1908, pursuant to said resolution of the said Board of Directors adopted on March 12, 1908, the accrued interest on said notes so transferred to said corporation was computed to March 15, 1908, in the sum of \$39,642.81, and one-half thereof was placed to the credit of said Barnette, and one-fourth thereof each to the credit of said Hill and Wood on the books of said corporation, and subsequently the same was paid to the said Barnette, Hill and Wood in cash.

### XXXIV.

That of said interest so paid to said Barnette, Hill and Wood as aforesaid, approximately \$7,500.00 thereof was never collected by said bank.

### XXXV.

That at the time the said Wood so surrendered his

stock as aforesaid, on June 30, 1908, the total assets of said corporation, as shown by its books were \$1,251,924.96 and its total liabilities were \$1,290.843.-43 including its outstanding capital stock in the sum of \$201,600.00, including the \$13,000.00 of stock of the defendant Wood. That among said assets the capital stock of the Gold Bar Lumber Company was carried at a valuation of \$341,949.00, and of its loans and discounts \$75,699.61 were then past due and are still unpaid, of which amount \$69,908.94 were taken over from said partnership, included in which was the above-mentioned notes of the Tanana Electric Company in the sum of \$27,997.38.

#### XXXVI.

That at the time said partnership assets were transferred to said corporation as aforesaid, said Gold Bar Lumber Company was closed down and remained so until the fall of 1908; that [69] immediately prior to its closing down, it had been operated at a loss; that no dividends have ever been paid on the capital stock of said Gold Bar Lumber Company during the time the same was owned by said bank.

#### XXXVII.

That subdivisions 5 and 6 of Article XII of the by-laws of said corporation, adopted at the stockholders meeting held March 12, 1908, provided that all issued and outstanding stock of the company that may be donated, to, or purchased by the company, or which shall revert by reason of failure to pay for the same, shall be treasury stock, and shall be held subject to the disposal of the action of the Board of

Directors. Said stock shall neither vote nor participate in dividends while held by the company. The Board of Directors shall be given the first option to purchase for the corporation the stock of any stockholder, and shall be entitled to purchase the same provided said Board of Directors shall offer to pay to said stockholder the same amount as he might obtain from any other person.

### XXXVIII.

That the laws of the State of Nevada, under which said corporation was organized, provide that it shall not be lawful for the directors of a corporation organized thereunder to divide, withdraw or in any way pay to the stockholders any part of the capital stock of the company. Said laws further provide that a corporation may purchase its own stock in the manner provided therein, and that if the capital be decreased not in the manner provided by said laws the stockholders shall be liable for such sums as they may receive of the amount so reduced. None of the things required to be done in the matter of the purchase of stock by said corporation, or to reduce the capital thereof, were done in the surrender and purchase of the stock of the said Wood. [70]

### XXXIX.

That on said June 30, 1908, the said Fairbanks Banking Company had no surplus nor undivided profits with which to purchase the stock of the said Wood and the same was paid for out of its capital.

### XL.

That the taking back of said stock and the payment therefor as aforesaid was illegal, wrongful, and



in violation of the laws of the State of Nevada under which said corporation was organized.

### XLI.

That pursuant to the agreement heretofore referred to between the said Fairbanks Banking Company and the said partnership formerly existing between the said Barnette, Hill and Wood, the said sum of \$200,000.00 to be paid to the said Barnette was placed to his credit on the books of said corporation as a special deposit, and subsequently the entire sum thereof was paid to the said Barnette in cash and drawn out by him from the funds of said bank.

### XLII.

That the assets of the said bank now in the hands of the receiver are insufficient to pay its liabilities, and the amount of such liabilities is more than \$470,000.00 in excess of the value of said assets.

### Conclusions of Law.

Upon the foregoing Findings of Facts the Court finds as Conclusions of Law as follows:

That the plaintiff take nothing against the defendant R. C. Wood on the cause of action stated in the complaint, and that said action be dismissed.

Dated Fairbanks, Alaska, this 6th day of July, 1914.

Entered in Court Journal No. 2, page 27, at Iditarod, Alaska.

Entered in Court Journal No. 13, page 6.

F. E. FULLER,  
Judge of the District Court, Territory of Alaska,  
Fourth Division, Fairbanks. [71]



Service of copy is hereby acknowledged this 15th day of July, 1914.

JOHN L. MCGINN,  
A. R. HEILIG,  
Attorneys for Defendant.

[Indorsed]: No. 1894. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, a Corporation, Plaintiff, vs. R. C. Wood, Defendant. Findings of Fact and Conclusions of Law. Filed in the District Court, Territory of Alaska, Fourth Division, Jul. 6, 1914. Angus McBride, Clerk. [72]

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*In the District Court for the Territory of Alaska,  
Fourth Judicial Division.*

No. 1894.

F. G. NOYES, Receiver of Washington-Alaska Bank, a Corporation, Organized Under the Laws of the State of Nevada,

Plaintiff,

vs.

R. C. WOOD,

Defendant.

**Decree.**

BE IT REMEMBERED that on the 8th day of June, A. D. 1914, the above-entitled cause came on regularly for trial before the Court without a jury upon the issues as joined between the plaintiff and the defendant; the Honorable F. E. Fuller, Judge of

said court, presiding; the plaintiff appearing in person and by his attorney, O. L. Rider, and the defendant appearing in person and by his attorneys John L. McGinn and A. R. Heilig.

And thereupon the plaintiff and defendant in open court agreed to submit the issues herein for final determination upon the testimony adduced, the admissions of the parties contained in the pleadings herein, and upon the testimony, so far as the same is applicable to said issues, heretofore introduced and received by the Court in cause number 1756 entitled "F. G. Noyes, Receiver of the Washington-Alaska Bank, a corporation, plaintiff, vs. J. A. Jessen et al., defendants," pending in said court.

And thereupon the Court, after hearing the arguments of respective counsel and upon consideration of said pleadings and of said testimony, and being fully advised in the premises, did, on the 6th day of July, 1914, make and file his findings of fact and conclusions of law upon the issues herein;

And thereupon, upon consideration thereof, it is by the Court ordered, adjudged and decreed that the plaintiff take nothing against the defendant, R. C. Wood, by reason of his complaint herein, and that said action be and the same is hereby dismissed at the cost of the plaintiff. [73]

All of which is now finally ordered, adjudged and decreed, this 6th day of July, 1914.

F. E. FULLER,  
Judge of the District Court, Territory of Alaska,  
Fourth Division.

Entered in Court Journal No. 2, page 37, Iditarod, Alaska.

Entered in Court Journal No. 13, page 9, Fairbanks, Alaska.

Service of copy accepted this 15 day of June, 1914.

J. L. McGINN,

A. R. HEILIG,

Attorneys for Defendant.

[Indorsed]: No. 1894. F. G. Noyes, Receiver, etc., Plaintiff, vs. R. C. Wood, Defendant. Decree.

Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk.  
[74]

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[Title of Court and Cause.]

**Plaintiff's Bill of Exceptions.**

**Exception No. 1.**

BE IT REMEMBERED: That on the 6th day of July, 1914, the Court made and entered in the above-entitled cause his Findings of Fact and Conclusions of Law, which said Conclusions of Law are as follows, to wit:

“That the plaintiff take nothing against the Defendant R. C. Wood, on the cause of action stated in the complaint, and that said action be dismissed.”

To the making and entering of which said Conclusions of Law the plaintiff at the time duly excepted and still excepts for the reason that the same is contrary to the facts found by the Court and contrary to law.

**Exception No. 2.**

BE IT FURTHER REMEMBERED: That on the 6th day of July, 1914, the Court made and entered its Decree in the above-entitled cause in con-

formity with said Conclusions of Law, decreeing that the plaintiff take nothing against the defendant R. C. Wood and that said cause of action be dismissed, to the making and entering of which said Decree the plaintiff at the time duly excepted and still excepts for the reason that the same is contrary to the facts found by the Court and contrary to law.

And now, in furtherance of justice and in order that the foregoing Exceptions may become a part of the record in this case, and within the time allowed by law to prepare, serve, file, and have settled his Bill of Exceptions in this case, the plaintiff [75] herewith presents the foregoing Bill of Exceptions in the above-entitled cause and prays that the same may be settled, signed and allowed by the Judge of this court in the manner prescribed by law.

O. L. RIDER,

Attorney for Plaintiff.

Service of the foregoing Bill of Exceptions duly accepted this 6th day of July, 1914.

A. R. HEILIG,

JOHN L. MCGINN,

Attorneys for Defendant.

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[Title of Court and Cause.]

**Order Settling and Allowing Plaintiff's Bill of  
Exceptions.**

And now, on this 6th day of July, 1914, the above-named plaintiff, in the manner prescribed by law, and the practice of this Court having presented to this Court for allowance and settlement his Bill of

Exceptions in the above-entitled cause, the plaintiff appearing by his attorney, O. L. Rider, and the defendant appearing by his attorney John L. McGinn,

And it appearing to the Court that said Bill of Exceptions has been heretofore, and within the time allowed by law, served upon the attorney for said defendant in due form, and that the same has been filed with the clerk of this court within the time allowed by law, and that no amendments thereto have been filed or claimed by the defendant, and that the right to file amendments thereto has been waived by the defendant, and that the plaintiff and defendant through their respective counsel have agreed that said Bill of Exceptions may be presented for settlement and allowance at this time; [76]

And it further appearing that said Bill of Exceptions is true and correct in all particulars and contains a true and correct statement of the exceptions taken in due time by the plaintiff,

IT IS HEREBY ORDERED that the foregoing Bill of Exceptions be, and the same is hereby, allowed, settled, approved and signed as Plaintiff's Bill of Exceptions in said cause, and the same is hereby ordered filed with the clerk of this court and made a part of the record in this cause.

F. E. FULLER,

District Judge.

Service of copy of the foregoing Order allowing and settling plaintiff's Bill of Exceptions is duly accepted this 6th day of July, 1914.

A. R. HEILIG,

JOHN L. MCGINN,

Attorneys for Defendant.



Entered in Court Journal No. 2, page 42, Iditarod, Alaska.

Entered in Court Journal No. 13, page 3.

[Indorsed]: No. 1894. In the District Court Within and for the Territory of Alaska, Fourth Judicial Division. F. G. Noyes, Receiver, etc., Plaintiff, vs. R. C. Wood, Defendant. Plaintiff's Bill of Exceptions and Order Settling and Allowing the Same. Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk. [77]

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[Title of Court and Cause.]

**Petition for Allowance of Appeal and Order  
Granting Same.**

To the Honorable F. E. FULLER, District Judge:

The above-named plaintiff, F. G. Noyes, receiver of the Washington-Alaska Bank, a corporation, feeling himself aggrieved by the decree made and entered in this cause on the 15th day of June, A. D. 1914, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California.

And your petitioner further prays that the proper order touching the security required of him to per-

fect his appeal be made.

O. L. RIDER,  
Attorney for Plaintiff.

Service of the foregoing petition for allowance of appeal is hereby admitted at Fairbanks, Alaska, this 28 day of January, 1915, by receipt of a copy thereof.

JOHN L. MCGINN and

A. R. HEILIG,

Attorneys for Defendants.

The foregoing petition on appeal is granted and the appeal allowed upon giving bond for costs conditioned as required by law in the sum of \$500.00.

CHARLES E. BUNNELL,

Judge of the District Court for the Territory of Alaska, Fourth Judicial Division.

Entered in Court Journal No. 13, page 29. [78]

[Indorsed]: No. 1894. F. G. Noyes, Receiver, etc., vs. R. C. Wood, Defendant. Petition for Allowance of Appeal and Order Granting Same. Filed in the District Court, Territory of Alaska, 4th Div. Jan. 28, 1915. Angus McBride, Clerk. [79]

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[Title of Court and Cause.]

**Order Allowing Appeal.**

On motion of O. L. Rider, attorney for the above-named plaintiff, F. G. Noyes, receiver of the Washington-Alaska Bank, a corporation, it is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore filed and entered herein, be, and the same is here allowed, and that a certified transcript of the record proceedings and papers upon which said decree was based, duly authenticated, be forthwith

transmitted to the said United States Circuit Court of Appeals.

It is further ordered that the bond for costs on appeal be, and the same is hereby, fixed at the sum of \$500.00.

Dated at Fairbanks, Alaska, Fourth Judicial Division of Alaska, this 28th day of January, 1915.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 29.

Service of the foregoing Order Allowing Appeal admitted and a true copy thereof received this 28 day of January, 1915.

JOHN L. MCGINN and

A. R. HEILIG,

Attorneys for Defendants.

[Indorsed]: No. 1894. F. G. Noyes, Receiver, etc., Plaintiff, vs. R. C. Wood, Defendant. Order Allowing Appeal. Filed in the District Court, Territory of Alaska, 4th Div. Jan. 28, 1915. Angus McBride, Clerk. [80]

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[Title of Court and Cause.]

### **Assignments of Error.**

And now, on this 28 day of January, A. D. 1915, comes the above-named plaintiff by his attorney, O. L. Rider, and says that the decree entered in the above cause on the 6th day of July, A. D. 1914, is erroneous and unjust to the plaintiff, and he files with his petition on appeal the following assignments of error upon which he will rely on his appeal from said decree made by this Honorable Court

upon the 6th day of July, A. D. 1914, in the above-entitled cause:

I.

Because the Court erred in making and entering in the above-entitled cause the following conclusions of law:

“That the plaintiff take nothing against the defendant, R. C. Wood, on the cause of action stated in the complaint, and that said action be dismissed.”

II.

Because the Court erred in making and entering a decree herein that the plaintiff take nothing against the defendant, R. C. Wood by reason of his complaint and that said action be dismissed at the cost of the plaintiff.

III.

Because the Court erred in refusing to make and enter judgment and decree in favor of the plaintiff and against the defendant for the sum of \$13,000.00, with interest and costs as prayed for in the petition.

WHEREFORE, the plaintiff prays that said decree be reversed and that the Circuit Court of Appeals shall render a proper [81] decree on the record as prayed for by the petition, and that the plaintiff have such other and further relief as may be equitable in the premises.

O. L. RIDER,

Attorney for Plaintiff.

Received copy Jan. 28, 1915.

JOHN L. MCGINN and

A. R. HEILIG,

Attys. for Deft.

[Indorsed]: No. 1894. F. G. Noyes, Receiver, etc., Plaintiff, vs. R. C. Wood, Defendant. Plaintiff's Assignment of Errors. Filed in the District Court, Territory of Alaska, 4th Div. Jan. 28, 1915. Angus McBride, Clerk. [82]

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[Title of Court and Cause.]

**Citation [Copy].**

United States of America,  
Territory of Alaska,—ss.

The President of the United States of America, to  
R. C. Wood, Greeting:

You are hereby notified that in a certain case in equity in the District Court for the Territory of Alaska, Fourth Judicial Division, wherein F. G. Noyes, Receiver of Washington-Alaska Bank, a corporation, is plaintiff, and R. C. Wood is defendant, an appeal has been allowed therein to the United States Circuit Court of Appeals for the 9th Circuit at San Francisco, California; and you are hereby cited and admonished to be and appear in said Circuit Court of Appeals at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the judgment and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable EDWARD D. WHITE,  
Chief Justice of the Supreme Court of the United



States, this 28th day of January, one thousand nine hundred and fifteen.

CHARLES E. BUNNELL,

District Judge, Fourth Judicial Division, Territory of Alaska.

[Seal]

Attest: ANGUS McBRIDE,

Clerk.

Service of the foregoing citation is hereby accepted and receipt of copy acknowledged this 29 day of January, 1915.

JOHN L. MCGINN and

A. R. HEILIG,

Attorneys for Defendant.

[Endorsed]: No. 1894. F. G. Noyes, Receiver, etc., Plaintiff, vs. R. C. Wood, Defendant. Citation. Filed in the District Court, Territory of Alaska, 4th Div. Jan. 28, 1915. Angus McBride, Clerk. [83]

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[Title of Court and Cause.]

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS, that we, F. G. Noyes, Receiver of the Washington-Alaska Bank, a corporation, as principal, and Geo. W. Pennington and A. Bruning, as sureties, are held and firmly bound unto the defendant in the full sum of five hundred (\$500.00) dollars, to be paid to said defendant, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 20th day of February, A. D. 1915.

WHEREAS, lately at a term of the District Court in the Territory of Alaska, Fourth Division, in a suit pending in said Court between F. G. Noyes, Receiver of the Washington-Alaska Bank, a corporation organized under the laws of the State of Nevada, as plaintiff, and R. C. Wood, as defendant, a decree was rendered in favor of the plaintiff in part and against the plaintiff in part, and said plaintiff having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree in the aforesaid cause in certain particulars, and a citation is about to be issued citing and admonishing the defendant to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California; and

WHEREAS, the above-named plaintiff has obtained an order from said Court that the bond on appeal be fixed in the sum of five hundred dollars for costs and damages on appeal. [84]

Now, the condition of the above obligation is such that if the said plaintiff shall prosecute his said appeal to effect and shall answer all damages and costs that may be awarded against him if he fails to make his plea good, then this obligation is to be void, otherwise to remain in force and effect.

F. G. NOYES,

By R. F. ROTH, Atty.

Principal.

GEO. W. PENNINGTON,

A. BRUNING,

Sureties.

United States of America,  
Territory of Alaska,—ss.

Geo. W. Pennington and A. Bruning, whose names are subscribed to the above and foregoing undertaking as sureties, being first duly sworn, each for himself doth depose and say: That he is a resident of the Territory of Alaska, that he is not an attorney or counsellor at law, marshal, clerk of any court, or other officer of any court; that he is worth the sum of five hundred (\$500.00) dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

GEO. W. PENNINGTON.

A. BRUNING.

Subscribed and sworn to before me this 20 day of February, 1915.

[Seal]

JOHN F. DILLON,

Commissioner and Ex-officio Justice of the Peace,  
Fairbanks Precinct.

The sufficiency of the sureties on the foregoing bond approved this 20th day of February, A. D. 1915.

CHARLES E. BUNNELL,

District Judge.

[Endorsed]: No. 1894. In the District Court of the United States for the Territory of Alaska. F. G. Noyes, Receiver, &c., Plaintiff, vs. R. C. Wood, Defendant. Bond on Appeal. Filed February 20, 1915. Angus McBride, Clerk. By P. R. Wagner, Deputy. [85]

[Certificate of Clerk U. S. District Court to  
Transcript of Record, etc.]

United States of America,  
Territory of Alaska,  
Fourth Division,—ss.

I, Angus McBride, Clerk of the District Court, Territory of Alaska, fourth division, do hereby certify, that the foregoing, consisting of eighty-five (85) typewritten pages, numbered from 1 to 85 inclusive, constitutes a full, true and correct transcript of the record on appeal in cause No. 1894, entitled: F. G. Noyes, receiver of Washington-Alaska Bank, a corporation, organized under the laws of the State of Nevada, plaintiff, vs. R. C. Wood, defendant, wherein F. G. Noyes, receiver of Washington-Alaska Bank, a corporation, organized under the laws of the State of Nevada, is plaintiff and appellant, and R. C. Wood, is defendant and appellee, and was made pursuant to and in accordance with the praecipe of the plaintiff and appellant filed in this action and made a part of this transcript, and by virtue of the citation issued in said cause, and is the return thereof in accordance therewith.

And I further certify that the costs of preparing said transcript and this certificate, amounting to thirty-three and 75/100 dollars (\$33.75) has been paid to me by counsel for plaintiff and appellant in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Fair-

banks, Alaska, this 25th day of February, 1915.

[Seal]

ANGUS McBRIDE.

Clerk District Court, Territory of Alaska, Fourth  
Division. [86]

[Endorsed]: No. 2594. United States Circuit Court of Appeals for the Ninth Circuit. F. G. Noyes, as Receiver of Washington-Alaska Bank, a Corporation, Appellant, vs. R. C. Wood, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Fourth Division.

Received March 18, 1915.

F. D. MONCKTON.

Clerk.

Filed April 1, 1915.

FRANK D. MONCKTON.

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.

[Title of Court and Cause.]

**Citation [on Appeal (Original)].**

United States of America,

Territory of Alaska,—ss.

The President of the United States of America, to  
R. C. Wood, Greeting:

You are hereby notified that in a certain case in equity in the District Court for the Territory of Alaska, Fourth Judicial Division, wherein F. G.



Noyes, Receiver of Washington-Alaska Bank, a corporation, is plaintiff, and R. C. Wood is defendant, an appeal has been allowed therein to the United States Circuit Court of Appeals for the 9th Circuit at San Francisco, California; and you are hereby cited and admonished to be and appear in said Circuit Court of Appeals at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the judgment and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 28th day of January, one thousand nine hundred and fifteen.

CHARLES E. BUNNELL,  
District Judge, Fourth Judicial Division, Territory  
of Alaska.

[Seal]

Attest: ANGUS McBRIDE,  
Clerk.

Service of the foregoing citation is hereby accepted and receipt of copy acknowledged this 29 day of January, 1915.

JOHN L. MCGINN and  
A. R. HEILIG,  
Attorneys for Defendant.

[Endorsed]: No. 1894. F. G. Noyes, Receiver, etc., Plaintiff, vs. R. C. Wood, Defendant. Citation. Filed in the District Court, Territory of Alaska, 4th Div. Jan. 28, 1915. Angus McBride, Clerk.

No. 2594. United States Circuit Court of Appeals for the Ninth Circuit. Citation on Appeal. Re-

ceived Mar. 18, 1915. F. D. Monckton, Clerk. Filed Apr. 1, 1915. Frank D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. By Meredith Sawyer, Deputy Clerk.

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[Title of Court and Cause.]

**Order Extending Return Day [to May 1, 1915].**

It having been stipulated and agreed by and between the parties hereto, through their respective attorneys, that the return day and the time for docketing the appeal in this action may be extended to and including the first day of May, 1915, on account of the great distance between Fairbanks, Alaska, and San Francisco, California, and the uncertainty of the mails.

NOW, THEREFORE, IT IS HEREBY ORDERED that the return day and the time for docketing said cause be extended to include the first day of May, 1915.

Dated at Fairbanks, Alaska, this 20th day of February, 1915.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 33.

[Endorsed]: No. 1894. In the District Court of the United States for the Territory of Alaska. F. G. Noyes, Receiver, etc., Plaintiff, vs. R. C. Wood, Defendant. Order Extending Return Day. Filed February 20, 1915. Angus McBride, Clerk. By P. R. Wagner, Deputy.

No. 2594. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to May 1, 1915 to File Record Thereof and to Docket Case. Filed Mar. 18, 1915. F. D. Monckton, Clerk. Refiled Apr. 1, 1915. F. D. Monckton, Clerk. .